

# EXHIBIT B

# **In re Twitter Inc. Securities Litigation**

**Videotaped Deposition of**

**WAYNE GUAY**

**August 28, 2019**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re TWITTER INC. SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS

Case No. 3:16-cv-05314-JST (SK)

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VIDEOTAPED DEPOSITION OF

WAYNE R. GUAY

New York, New York

August 28, 2019

REPORTED BY:

Eileen Mulvenna, CSR/RMR/CRR

Job No. 10059450

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1           VIDEOTAPED DEPOSITION of WAYNE R. GUAY,  
2   Expert Witness on behalf of defendants in the  
3   above-captioned matter, held at the offices of  
4   Simpson Thacher & Bartlett, 425 Lexington Avenue,  
5   New York, New York, beginning at 8:38 a.m. and  
6   ending at 3:04 p.m. on August 28, 2019, before  
7   Eileen Mulvenna, CSR/RMR/CRR, Certified Shorthand  
8   Reporter, Registered Merit Reporter, Certified  
9   Realtime Reporter, and Notary Public of the State of  
10   New York.

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A P P E A R A N C E S:

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1 A P P E A R A N C E S (Continued):

2

3 Attorneys for the Defendants and the Witness:

4

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7 New York, New York 10017

8 (212) 455-2000

9 By: Jonathan K. Youngwood, Esq.

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11

12 Also Present:

13

14 Daniel Ortega, Videographer

15

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1 THE VIDEOGRAPHER: We're now on the  
2 record.

3 Today's date is August 28, 2019, and  
4 the time is 8:38 a.m.

5 This is the video deposition of  
6 Wayne R. Guay in the matter of In Re Twitter,  
7 Inc. Securities Litigation for the United  
8 States District Court, Northern District of  
9 California, San Francisco Division.

10 This video deposition is being held at  
11 425 Lexington Avenue, New York, New York.

12 My name is Daniel Ortega of Aptus  
13 Court Reporting. I'm the legal videographer.

14 Will counsel please identify  
15 yourselves for the record.

16 MS. CONN: Susannah Conn, Robbins  
17 Geller Rudman & Dowd, on behalf of plaintiffs  
18 in the class.

19 MS. SCHLESIER: Heather Schlesier on  
20 behalf of the plaintiffs in the case.

21 MR. LEVIN: Gregg Levin, L-E-V-I-N,  
22 from Motley Rice also on behalf of the  
23 plaintiffs in the class.

24 MR. YOUNGWOOD: Jonathan Youngwood for  
25 the witness and the defendants.

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1 THE VIDEOGRAPHER: The court reporter  
2 today is Eileen Mulvenna, who will now swear  
3 in the witness.

4 WAYNE R. GUAY,  
5 having been duly sworn by Eileen Mulvenna,  
6 a Notary Public of the State of New York,  
7 was examined and testified as follows:

8 EXAMINATION

9 BY MS. CONN:

10 Q. Good morning --

11 Is it professor?

12 A. Professor is fine.

13 Q. -- professor.

14 And your last name is pronounced Guay?

15 A. Guay, that's correct.

16 Q. Good morning, Professor Guay. Thank  
17 you for being here this morning. We were introduced  
18 off the record, but, again, I'm Susannah Conn, and  
19 I'm here on behalf of plaintiffs in this matter.

20 I'm going to hand you what's already  
21 been marked as Henderson Exhibit 2 just so you have  
22 it handy because, as you can imagine, we'll be  
23 talking about this quite a bit this morning.

24 A. Okay.

25 (Exhibit 2, Previously marked.)

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1 BY MS. CONN:

2 Q. Before we get started, how many times  
3 have you been deposed before?

4 A. I don't know exactly.

5 Q. More than once?

6 A. Yes, more than once.

7 Q. Are you familiar with the basic rules  
8 of a deposition?

9 A. Yes.

10 Q. Okay. So I'll forego those. I'm sure  
11 you've discussed them with your counsel.

12 I'll just remind you that you are  
13 under oath, and that oath that you just swore is the  
14 same oath that you would take if you were testifying  
15 in a court of law.

16 Do you understand that?

17 A. Yes.

18 Q. Okay. If you don't understand my  
19 question, please let me know and I'll try to  
20 rephrase it.

21 A. Okay.

22 Q. And if you need a break at any time,  
23 let me know.

24 A. Okay.

25 Q. Is there any reason you cannot testify

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1 fully and accurately today?

2 A. No.

3 Q. So you have in front of you Exhibit  
4 Henderson 2.

5 Is this the report that you prepared  
6 in this case?

7 A. Yes, it is.

8 Q. Is there anything that you would like  
9 to change or amend in your report before we start  
10 discussing it?

11 A. No.

12 Q. So if I could have you turn to  
13 paragraphs 1 and 2 of Henderson 2, your expert  
14 report.

15 A. Okay.

16 Q. Are these paragraphs an accurate  
17 description of your educational and professional  
18 experience?

19 A. Yes.

20 Q. And Appendix A to your report is a  
21 copy of your curriculum vitae; is that correct?

22 A. Yes, that's correct.

23 Q. Is this current?

24 A. It's quite current, yes, certainly  
25 within the last six months.

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1 Q. Okay. So as far as you know, nothing  
2 needs to be changed or updated in your curriculum  
3 vitae?

4 A. Nothing of any significance.

5 Q. Okay. So you are currently teaching  
6 at the Wharton School of Business; is that correct?

7 A. That's correct.

8 Q. And you have a Ph.D. in accounting  
9 from the University of Rochester?

10 A. I do.

11 Q. And also a master of science in  
12 business administration from the same school; is  
13 that correct?

14 A. Correct.

15 Q. I'd like to ask you about -- on the  
16 last page here of your CV, you have -- under "Other  
17 Professional Experience," you have a consulting  
18 practice.

19 A. Uh-huh.

20 Q. Can you describe what that practice  
21 is.

22 A. Yes. That practice would include work  
23 like I've done in this matter, so expert testimony  
24 in litigation matters, but it would also include  
25 other projects I've worked on where I've consulted

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1 directly for corporations or been asked to do  
2 certain types of research for corporations or for  
3 organizations that they might like done.

4 **Q. And when you've consulted directly for**  
5 **corporations, has that involved advising**  
6 **corporations on their Rule 10b5-1 plans?**

7 A. Certainly executive -- certainly  
8 advising on executive compensation matters generally  
9 and corporate governance matters generally, but I  
10 can't recall whether there would have been 10b5-1  
11 issues there as well.

12 **Q. You haven't been asked by any**  
13 **corporation to help them structure their 10b5-1**  
14 **plans?**

15 A. No.

16 **Q. Okay. Are you an attorney, sir?**

17 A. I am not.

18 **Q. Do you have any legal training?**

19 MR. YOUNGWOOD: Objection to form.

20 THE WITNESS: No formal legal  
21 training, no.

22 BY MS. CONN:

23 **Q. Do you have informal legal training?**

24 A. Well, I took some classes as an MBA  
25 student in undergrad on law issues, but nothing

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1 beyond that.

2 Q. Okay. And that was at the University  
3 of Rochester?

4 A. That would have been probably earlier  
5 than that. It would have been in -- at either  
6 Northeastern University or even Clarkson University.

7 Q. Okay. And -- but nothing since then?

8 A. No.

9 Q. Do you hold yourself out to be an  
10 expert in the disclosures that are required by the  
11 federal securities laws?

12 MR. YOUNGWOOD: Objection to form.

13 THE WITNESS: I'm not sure exactly  
14 what you mean by that question.

15 BY MS. CONN:

16 Q. Okay. Do you consider yourself an  
17 expert in federal securities matters?

18 A. No.

19 MR. YOUNGWOOD: Objection to form.

20 BY MS. CONN:

21 Q. Are you familiar with the term  
22 "scienter"?

23 A. Yes.

24 Q. Do you understand what -- withdraw  
25 that.

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1                               What do you understand the term  
2    "scienter" to mean?

3               A.       I understand it broadly, from a  
4    layperson's perspective, to mean motivations or  
5    incentives to engage in certain types of behavior.

6               Q.       Do you know what the legal definition  
7    of "scienter" is as that term is used in federal  
8    securities cases?

9               A.       I do not.

10              Q.       Have you read any legal cases that  
11   define "scienter" as that term is used in the  
12   federal securities law?

13              A.       I probably have through these kinds of  
14   litigation matters, but I can't recall specifically.

15              Q.       Have you -- have you read any jury  
16   instructions that define "scienter" as that term is  
17   used in the federal securities laws?

18              A.       Not that I recall.

19              Q.       If we could go back to your consulting  
20   work, you said that consists of expert testimony in  
21   matters such as this; is that right?

22              A.       That's correct.

23              Q.       How many times have you served as an  
24   expert witness in a federal securities case?

25              A.       That I wouldn't be able to say



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1 specifically, which jurisdiction my cases were in.

2 **Q. Okay. How many times have you served**  
3 **as an expert witness?**

4 A. By --

5 MR. YOUNGWOOD: Objection to form.

6 Are you asking him if we have some  
7 other deposition -- like report and testimony  
8 or -- because you're not asking about  
9 consulting, I'm assuming. If we would just  
10 define what you're asking.

11 MS. CONN: Sure. I think -- I think I  
12 can ask how many times he's been retained as  
13 an expert without encroaching on work product  
14 so --

15 MR. YOUNGWOOD: I'm fine with that if  
16 he can separate it. I'm also just trying  
17 to --

18 MS. CONN: Okay.

19 MR. YOUNGWOOD: -- make sure he knows  
20 how to answer the question.

21 MS. CONN: Okay.

22 THE WITNESS: So the question is?

23 BY MS. CONN:

24 **Q. How many times have you been retained**  
25 **as an expert in a lawsuit?**

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1           A.       I don't know precisely, but it would  
2       be probably at least 25 or 30.

3           Q.       Of those 25 to 30, you don't know how  
4       many were securities cases; is that correct?

5           A.       So class action lawsuits, is that what  
6       you're asking, or something broader than that?

7           Q.       Something arising under the federal  
8       securities laws.

9           A.       I wouldn't know the precise number,  
10      no.

11          Q.       What percentage of your income comes  
12      from your consulting work?

13                   MR. YOUNGWOOD: Objection to form.  
14                   It's vague as to time and -- objection to  
15                   form.

16                   THE WITNESS: Recently or over time  
17                   or --

18      BY MS. CONN:

19          Q.       Let's say in the last five years.

20          A.       Certainly varies from year to year  
21      depending upon what I'm doing, but I would say maybe  
22      a third, on average.

23          Q.       How about this year?

24          A.       This year's not over yet. I've done a  
25      bit more this year than I have in past years, so it

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1 would be probably somewhat higher than that, maybe  
2 40 percent or something this year.

3 Q. Of the 25 to 30 times that you have  
4 been retained as an expert in a lawsuit, how many  
5 times were you retained by defendants?

6 A. I don't know the precise number.

7 Q. How many times have you been retained  
8 by the Cooley law firm?

9 A. By the --

10 Q. Cooley.

11 A. That I couldn't tell you.

12 Q. How many times have you been retained  
13 by Simpson Thacher?

14 A. Couldn't tell you that either.

15 Q. Have you ever worked with  
16 Mr. Youngwood before?

17 A. I have not.

18 Q. Have you ever worked for Twitter  
19 before?

20 A. I have not.

21 Q. Has your testimony ever been excluded  
22 by any court that you're aware of?

23 A. No.

24 Q. Have you been retained in other  
25 matters to opine on executives' insider trading?

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1 A. Yes.

2 Q. How many times?

3 A. I don't know the precise number.

4 Q. Okay. Let's take a look at Exhibit B  
5 to your report.

6 A. Exhibit B?

7 Q. I'm sorry. Appendix B.

8 A. Appendix B. Okay.

9 Q. This is a list of your expert  
10 retentions and testimony within the last four years;  
11 is that right?

12 A. It is, yes. I believe that's correct.

13 Q. So let's just go through this.

14 The Smilovits versus First Solar  
15 matter --

16 A. Okay.

17 Q. -- did you offer an opinion about  
18 executives' insider trading in that matter?

19 A. Yes.

20 Q. And were you testifying -- sorry.

21 Were you offering an opinion on behalf  
22 of defendants or plaintiffs?

23 A. The defendants.

24 Q. And was your opinion in that matter  
25 that the executives' insider trading did not support

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1     **an inference of scienter?**

2                   MR. YOUNGWOOD: Let me just -- I don't  
3                   want you to answer -- I don't know the exact  
4                   nature of these cases. I don't know if there  
5                   are protective orders in place. I think so  
6                   far counsel's questions have been at quite a  
7                   high level, but if you need to talk to me or  
8                   if you have a concern that you are  
9                   encroaching on a protective order or  
10                  confidentiality agreement, we don't -- no  
11                  one's asking you to do that.

12                 THE WITNESS: Okay.

13                 MR. YOUNGWOOD: But if you can answer  
14                 without doing that, go ahead.

15                 THE WITNESS: So certainly all of  
16                 these cases would be covered by  
17                 confidentiality agreements, and I'm not  
18                 sure -- I guess I'm generally comfortable  
19                 talking about some of the issues at a high  
20                 level, but the opinions I've -- specific  
21                 opinions I've rendered, I'm not comfortable  
22                 with that.

23     BY MS. CONN:

24                 **Q. All right. Let me ask you this: This**  
25                 **is a summary of your expert retentions and**

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1 testimony; correct? That's what the title of the  
2 document is.

3 A. It is, yes.

4 Q. So in each of these cases, did you  
5 prepare an expert report?

6 A. Okay. Let's see. Yes.

7 Q. And to the best of your knowledge, was  
8 that expert report provided to the opposing side in  
9 those cases?

10 A. Yes.

11 MS. CONN: So, Counsel, if a report  
12 was exchanged, I don't think that we are --

13 MR. YOUNGWOOD: I think you can ask  
14 him which side he worked for. I don't have a  
15 problem -- I didn't say it right.

16 Which side he was associated with, I  
17 don't have a problem with that. I think  
18 where I got a little uncomfortable -- but I  
19 don't know the nature of the opinions or the  
20 reports -- if you're asking him the substance  
21 of the opinion he gave, that I think would be  
22 covered by --

23 MS. CONN: I see.

24 MR. YOUNGWOOD: In this case, I think  
25 it would be covered by a protective order.

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1           So I'm assuming it might be in those. But if  
2           you want to say which side retained him or  
3           whatever --

4                     MS. CONN: Okay.

5                     MR. YOUNGWOOD: -- I have no -- I  
6           would think your protective order wouldn't  
7           preclude that.

8                     MS. CONN: Okay.

9           BY MS. CONN:

10                    Q.       Well, then, let's just take the next  
11           one, the Goldenberg and Sullivan versus Immunomedics  
12           matter.

13                    A.       Okay.

14                    Q.       Did that opinion relate to executives'  
15           insider trading?

16                    A.       Insider trading -- certainly executive  
17           compensation and stock grants and things like that,  
18           but I don't know if there was insider trading issues  
19           there.

20                    Q.       Were you retained in that matter by  
21           defendants or plaintiffs?

22                    A.       The plaintiffs.

23                    Q.       Did you testify in court --

24                    A.       I testified --

25                    Q.       -- in that matter?

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1 A. -- in an arbitration.

2 Q. Were you deposed in that matter?

3 A. I don't believe there was a  
4 deposition. I think it went right to the  
5 arbitration.

6 Q. Okay. The next one on the list is  
7 In Re: Think Finance LLC.

8 A. Uh-huh.

9 Q. Were you retained by defendants or  
10 plaintiffs in that matter?

11 A. That would have been the defendants.

12 Q. Did your opinions -- did your opinions  
13 in that matter relate to insider trading?

14 A. No.

15 Q. Were you deposed in that matter?

16 A. Yes.

17 Q. Did you testify at trial in that  
18 matter?

19 A. No.

20 Q. The next one on the list is  
21 Commonwealth of Pennsylvania versus Think Finance.

22 A. Yes.

23 Q. Were you -- well, is that related to  
24 the one above it?

25 A. Yes, it's the same matter.



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1 Q. Okay. So you were retained by  
2 defendants in that matter; is that right?

3 A. Yes.

4 Q. And that opinion did not relate to  
5 insider trading; is that correct?

6 A. Correct.

7 Q. The next one on the list is In Re:  
8 ExamWorks Group?

9 A. Uh-huh. Yes.

10 Q. Were you retained by defendants or  
11 plaintiffs in that matter?

12 A. That would have been the defendants.

13 Q. And did that opinion relate to insider  
14 trading?

15 A. Related to executive compensation and  
16 stock-related issues, but I don't recall there being  
17 an insider trading issue there.

18 Q. The next one on the list is Hussein  
19 versus Quality Systems?

20 A. Yes.

21 Q. Were you retained by defendants or  
22 plaintiffs in that matter?

23 A. That one's a little tricky because I  
24 started out being retained by the defendants, but by  
25 the time we got to court, we were the plaintiffs.

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1 So there were countersuits. So I think the suits on  
2 my side got thrown out and then there were  
3 countersuits, so we ended up going in as a  
4 plaintiff.

5 Q. I see.

6 And did that matter -- did your  
7 opinion in that matter relate to insider trading?

8 A. Yes.

9 Q. And then you have Snowden versus  
10 UnitedHealth?

11 A. Correct.

12 Q. Were you retained by defendants or  
13 plaintiffs in that matter?

14 A. Defense.

15 Q. Did the -- did your opinion in that  
16 matter relate to insider trading?

17 A. No.

18 Q. Were you deposed in that matter?

19 A. I was.

20 Q. Did you testify at trial in that  
21 matter?

22 A. I testified at an arbitration.

23 Q. How about Quality Systems; were you  
24 deposed in that matter?

25 A. Yes, I was.

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1 Q. Did you testify at trial in that  
2 matter?

3 A. I did, yes.

4 Q. Was it a jury trial? Do you know?

5 A. It was not. Is that right? No, I  
6 don't believe it was.

7 Q. I don't know if we went through this  
8 because we sort of got into a conversation with  
9 counsel.

10 In First Solar, did your opinion  
11 relate to insider trading?

12 A. It did, yes.

13 Q. So at least insofar as we've been able  
14 to discuss it from the cases on this list, the cases  
15 in which your opinion related to insider trading you  
16 were retained by defendants; is that correct?

17 A. Well, for the First Solar case, that  
18 is correct. For the Quality Systems case, as we  
19 talked about, when I testified at -- in court, my  
20 recollection is we were the plaintiffs.

21 Q. You were retained in that matter by  
22 Quality Systems; is that correct?

23 A. By Quality Systems, that's correct.

24 Q. Okay. Have you ever been retained by  
25 a plaintiff to offer an opinion as to insider

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1 trading?

2 MR. YOUNGWOOD: Objection to form.

3 THE WITNESS: Yes, so we have  
4 discussed the Quality Systems case. I mean,  
5 in that case we were the plaintiffs. And,  
6 yes -- I can't recall exactly how many, but,  
7 yes, I have been retained by the plaintiffs  
8 in insider trading cases or in at least  
9 trading/executive compensation-related  
10 matters.

11 BY MS. CONN:

12 Q. Have you ever offered an opinion that  
13 an executive's trading supported an inference of  
14 scienter?

15 MR. YOUNGWOOD: Objection to form.

16 THE WITNESS: I can't recall using  
17 those specific words or giving that specific  
18 opinion, but, broadly, yes.

19 BY MS. CONN:

20 Q. And when you say "broadly, yes," can  
21 you explain what you mean.

22 A. Simply broadly that the executive's  
23 trading was -- I guess my opinion was inconsistent  
24 with, you know, say, behavior that would be  
25 consistent with corporate policies and things like

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1 that.

2 Q. When were you retained in this case?

3 A. I believe I was retained in late June  
4 or early July, shortly after I think Professor  
5 Henderson filed his report.

6 Q. Do you know how your retention came  
7 about?

8 MR. YOUNGWOOD: Objection to form.

9 THE WITNESS: Yes.

10 BY MS. CONN:

11 Q. And how did your retention come about?

12 A. I was contacted by Analysis Group,  
13 which is a litigation support firm. And they  
14 indicated, as I recall, that they had had  
15 conversations with -- with the law firm that was  
16 defending Twitter. And then I had conversations  
17 with them.

18 Q. Since the time you submitted your  
19 report and Appendix B, have you prepared a report or  
20 testified in any other case?

21 A. Say that again. I'm sorry.

22 Q. We've talked about Appendix B, the  
23 cases --

24 A. Yes.

25 Q. -- in which you've testified in the

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1 last four years.

2 Since you submitted this report on  
3 August 7th, have you prepared a report or testified  
4 in any other case?

5 A. I have prepared -- I have prepared  
6 other reports -- I have prepared at least one other  
7 report, but I haven't given any testimony.

8 Q. What case was that that you prepared a  
9 report in?

10 A. That was a case involving Apple. I  
11 don't remember the precise name of the case.

12 Q. Is it a securities case?

13 A. It is a securities case.

14 Q. Does your opinion relate to insider  
15 trading in that case?

16 A. No, not that I recall.

17 Q. Were you retained by defendants or  
18 plaintiffs in that matter?

19 A. Defendants.

20 Q. When did you submit that report?

21 A. That would have been sometime in  
22 August, maybe.

23 Q. Have you been deposed in that matter?

24 A. I have not.

25 Q. Do you own any Twitter stock today?

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1           A.       I do not.

2           **Q.       Have you ever owned Twitter stock?**

3           A.       No.   Certainly indirectly through  
4 mutual funds and things, but not directly.

5           **Q.       If you would turn to the next page,**  
6 **which is Appendix C to your report.**

7           A.       Okay.

8           **Q.       This appendix is titled, "Materials**  
9 **Considered," and it's a nine-page list of pleadings,**  
10 **academic articles, public information, and documents**  
11 **produced in the litigation; correct?**

12          A.       Yes, lots of different things here.

13          **Q.       Did you read all of the materials that**  
14 **are on this list?**

15          A.       I read many of them, I would say most  
16 of them, but not each and every one.

17          **Q.       Do you know which ones you did read**  
18 **and which ones you didn't read?**

19          A.       Not specifically. I mean, the ones --  
20 a number of the ones that I wouldn't have read in  
21 detail would have been some of the SEC filings,  
22 which are more for data collection purposes and  
23 somewhat repetitive in terms of what they do.

24          **Q.       Did you review all of the documents**  
25 **identified as Bates stamped documents?**

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1           A.       I wouldn't be able to say for sure.  
2       There's a lot here and there's not any description  
3       of what they are, but certainly a lot of them.

4           **Q.       How did you select the documents then**  
5       **to be included in this list?**

6           A.       Well, it would have been an iterative  
7       process over the time I wrote -- I wrote the report  
8       and was drafting the report. So some of this would  
9       have been materials that I brought forward, academic  
10      literature that I was aware of or discovered through  
11      doing some research. Some of it would have been  
12      documents provided by counsel that would be the  
13      Bates stamped documents, obviously, depositions and  
14      other sorts of things. And some of it would have  
15      been collected at my direction by Analysis Group,  
16      some of the SEC filings and those sorts of things.

17          **Q.       So that's true of all the documents on**  
18      **the list, not just the Bates stamped documents?**

19          A.       What is true of the --

20          **Q.       That it was an iterative process, some**  
21      **of the documents identified by you, others**  
22      **identified by counsel, others identified by Analysis**  
23      **Group?**

24          A.       Yes. I mean, obviously, I wouldn't  
25      have had any of the documents that are Bates stamped



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1 on my own, but the documents that are publicly  
2 available, certainly some of those I was aware of.  
3 Some of them I did my own research. Some of them I  
4 directed Analysis Group to do various research. So  
5 we pulled together these documents over time.

6 **Q. Okay. Did you ask to see documents on**  
7 **particular topics?**

8 A. Documents -- what kind of documents?

9 **Q. You said that some documents were**  
10 **provided by counsel and some were collected by**  
11 **Analysis Group at your direction; is that correct?**

12 A. That's correct.

13 **Q. And so did you ask to see documents on**  
14 **particular topics?**

15 A. I would have, yes.

16 **Q. What topics?**

17 A. Well, it would have been topics  
18 related to trading issues, related to corporate  
19 policies, related to depositions and discussion of  
20 the trades by various individuals, internal  
21 discussions by e-mails with respect to trades by  
22 certain individuals. Those are examples.

23 **Q. Did you yourself have access to any**  
24 **kind of database or repository of documents?**

25 A. Not of the private -- the company's

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1 documents. I certainly have access to SEC filings  
2 and things like that.

3 Q. Okay. But as far as documents  
4 produced in the litigation, you were not running  
5 your own searches through a document repository?

6 A. I was not.

7 Q. If you'll look at the list of Bates  
8 stamped documents, I notice there are roughly 250  
9 Bates stamped documents in this list; correct?

10 A. Correct.

11 Q. You cited approximately ten of those  
12 in your report.

13 Were the remaining documents  
14 irrelevant to your analysis?

15 MR. YOUNGWOOD: Objection to form.

16 THE WITNESS: I don't recall what's in  
17 those remaining documents. They would be  
18 documents that I reviewed, but did not need  
19 to rely on when writing my report.

20 BY MS. CONN:

21 Q. Is there any information you  
22 considered in preparing your report that is not on  
23 this list?

24 A. Certainly my background and  
25 experience, I mean, broadly wouldn't be captured in

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1 a document, but nothing that I can think of offhand.

2 Q. Did you have any conversations or  
3 correspondence directly with Mr. Costolo?

4 A. I did not.

5 Q. Did you have any conversations or  
6 correspondence directly with Mr. Noto?

7 A. No.

8 Q. In the course of preparing your  
9 report, did you have any conversations with any  
10 current or former Twitter employee?

11 A. No.

12 Q. Did you ask for information about  
13 Mr. Costolo's personal -- withdraw that.

14 Did you ask for information about  
15 Mr. Costolo's compensation package?

16 A. I mean, most of the compensation  
17 package information I can see from SEC filings. I  
18 can't recall whether I asked for anything  
19 supplemental to what I can see in the SEC filings.  
20 There may have been.

21 Q. Same question as to Mr. Noto's  
22 compensation package.

23 A. Same answer for Mr. Noto.

24 Q. Did you ask to see any of  
25 Mr. Costolo's personal financial records?

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1           A.           I can't recall whether I did or not.

2           Q.           Would that be documented somewhere if  
3 you had?

4           A.           I don't think so. It probably would  
5 have been through a phone call.

6           Q.           Did you ask to see any of Mr. Noto's  
7 personal financial records?

8           A.           I don't recall.

9           Q.           Now, you are billing for your time in  
10 this matter at a rate of \$925 an hour; is that  
11 right?

12          A.           That's correct.

13          Q.           How many hours have you spent to date  
14 on this matter?

15          A.           I don't know precisely, but somewhere  
16 around maybe 120 or so.

17          Q.           How long did you spend preparing for  
18 today's deposition?

19                       MR. YOUNGWOOD: Objection to form.

20                       THE WITNESS: Oh, maybe 30 hours,  
21 something like that.

22 BY MS. CONN:

23          Q.           In addition to -- aside from preparing  
24 for today's deposition, have you done any additional  
25 work on this matter since you submitted your report,

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1     **which is Henderson 2?**

2             A.       Any additional work?

3             **Q.       On this matter.**

4             A.       What do you mean by "additional work"?

5             **Q.       Have you been asked to prepare any**

6 **additional materials? Have you reviewed any**

7 **additional documents? Have you --**

8             A.       Nothing specific comes to mind, no.

9             **Q.       If you could turn to paragraph 7 of**  
10 **your report.**

11                    **You indicate here that you were**  
12 **assisted in this matter by staff at Analysis Group,**  
13 **and you've mentioned them in your testimony already**  
14 **today.**

15                    **Who or -- who or what is Analysis**  
16 **Group?**

17             A.       Analysis Group is a litigation support  
18 firm. They may do other things, but that's the  
19 nature in which I know them.

20             **Q.       Have you previously worked on other**  
21 **legal matters through Analysis Group?**

22             A.       I have.

23                    MR. YOUNGWOOD: Objection to form.

24 BY MS. CONN:

25             **Q.       I'm sorry. Was that yes?**

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1           A.       Yes, I have.

2           **Q.       Who at Analysis Group was helping with**  
3 **your report?**

4           A.       There are a team of individuals that  
5 do. Two people I've had the most interaction with  
6 are a woman named Ran Wei and David Glick.

7           **Q.       Can you -- withdraw that.**  
8                   **Can you describe Ms. Wei's**  
9 **qualifications?**

10          A.       Yes. She actually has a Ph.D. from  
11 The Wharton School and would have graduated during  
12 my time there. I can't recall how well I knew her  
13 when she was a Ph.D. student, but she has a Ph.D. in  
14 insurance and risk management, I think.

15          **Q.       Was she a student of yours?**

16          A.       No.

17          **Q.       And what about Mr. Glick; what are his**  
18 **qualifications?**

19          A.       I don't know all of his background.  
20 He has a Ph.D. in economics. It's from one of the  
21 Ivy League institutions. I think maybe from Brown,  
22 but I'm not a hundred percent sure on that.

23          **Q.       So when you say that a team of people**  
24 **were assisting you from Analysis Group, were there**  
25 **others besides Ms. Wei and Mr. Glick?**

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1           A.       Yes, they would have had other  
2       assistants that would have been collecting data and  
3       doing things that they would have been directing,  
4       but that I didn't have much direct contact with.

5           Q.       So other than Ms. Wei and Mr. Glick,  
6       you don't know the qualifications of anyone at  
7       Analysis Group who was assisting with your report;  
8       is that fair to say?

9           A.       I don't know their specific  
10      backgrounds, no.

11          Q.       And as far as communicating directly  
12      with Analysis Group in the course of preparing your  
13      report, was that strictly with Ms. Wei and  
14      Mr. Glick?

15          A.       Say that again. I'm sorry.

16          Q.       As far as communicating directly with  
17      Analysis Group, was that strictly with Ms. Guay --  
18      sorry -- Wei or Mr. Glick?

19          A.       It wouldn't have been strictly. There  
20      would have been other people at Analysis Group on  
21      certain phone calls from time to time that would  
22      have chimed in if they had been collecting certain  
23      data or doing certain types of analyses.

24          Q.       But you don't know their names?

25          A.       I can't recall them, no.

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1 Q. How many hours has Analysis Group  
2 billed in connection with your report in this  
3 matter?

4 A. I don't know.

5 Q. Do you know the total dollar amount  
6 Analysis Group has billed in connection with your  
7 report?

8 A. No.

9 Q. Do you get any portion of their  
10 compensation?

11 A. I do not.

12 Q. Do you know who pays Analysis Group?

13 A. I don't know their compensation  
14 arrangement, no.

15 Q. It isn't you that's paying them; is  
16 that right?

17 A. No, that's certainly correct.

18 Q. Do you have any kind of -- do you  
19 receive any kind of compensation from Analysis  
20 Group?

21 A. No -- well, I mean -- let me just  
22 clarify. My invoices go through Analysis Group and  
23 then Analysis Group -- I believe they send my  
24 invoice on to the law firm or Twitter. And then  
25 when I get -- when I get payment for my invoices, it



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1 comes via Analysis Group, but that's just a -- I  
2 think an expediency issue to get me compensated in a  
3 timely manner.

4 Q. Okay. If we could turn to paragraph 6  
5 of your report, Henderson 2.

6 A. Okay.

7 Q. Paragraph 6 says, "I have been asked  
8 by counsel for defendants to respond to Professor  
9 Henderson's opinions and evaluate whether or not the  
10 trading behavior of Mr. Costolo and Mr. Noto, as  
11 well as other Twitter executives, during the class  
12 period is inconsistent with an intent to deceive  
13 investors or improperly profit off of material  
14 non-public information."

15 Do you see that?

16 A. I do, yes.

17 Q. Is that a complete summary of your  
18 assignment in this case?

19 A. Yes. It's a complete summary of it,  
20 yes.

21 Q. When you mention here "other Twitter  
22 executives," who exactly are you referring to?

23 A. Well, Professor Henderson, in his  
24 report, refers to other Twitter executives and does  
25 some analysis of other Twitter executives, including

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1 Mr. Dorsey, Mr. Williams and other executives, and  
2 Mr. Bain, and there are several others.

3 Q. And when you write here "whether or  
4 not the trading behavior is inconsistent with an  
5 intent to deceive investors or improperly profit off  
6 of material non-public information," is there a  
7 difference in your mind between those two?

8 MR. YOUNGWOOD: Objection to form.

9 THE WITNESS: "Between those two"  
10 being?

11 BY MS. CONN:

12 Q. Sure. Let me make it more clear.  
13 Is there a difference in your mind  
14 between an intent to deceive and improperly  
15 profiting off of material non-public information?

16 A. Well, they are -- they're potentially  
17 two different things. I mean, they're typically  
18 related, but they're two similar different things.

19 Q. In your mind, does an intent to  
20 deceive require that the person personally profit  
21 from their behavior?

22 A. Well, as a matter of financial  
23 economics and sort of my understanding of executive  
24 incentives, I mean, typically executives, if they're  
25 going to engage in behavior that deceives investors,

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1     there's some benefit that they expect to receive  
2     from it.

3             **Q.       Is that benefit financial?**

4             **A.       Typically it is, yes.**

5             **Q.       Turning ahead to Section III of your**  
6     **report, starting at paragraph 8 --**

7             **A.       Okay.**

8             **Q.       -- does this section summarize all of**  
9     **your opinions in this case?**

10            MR. YOUNGWOOD:  Objection to form.

11            THE WITNESS:  It is a summary of my  
12     opinions, yes.

13     BY MS. CONN:

14            **Q.       Okay.  Do you plan to offer any**  
15     **opinions in this case other than those set forth in**  
16     **Section III of your report?**

17            **A.       I --**

18            MR. YOUNGWOOD:  Objection to form.

19            THE WITNESS:  I haven't been asked to  
20     at this time, no.

21     BY MS. CONN:

22            **Q.       Paragraph 7 you have reserved the**  
23     **right to update -- sorry.  Yes -- you reserve the**  
24     **right to update your opinions if additional relevant**  
25     **information becomes available; correct?**

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1 A. Correct.

2 Q. Do any of your opinions require  
3 updating as you sit here today?

4 A. No.

5 Q. In reaching your opinions as stated in  
6 paragraph 8 of Henderson 2, were you asked to make  
7 any assumptions?

8 A. Well, I've certainly stated in the  
9 report any assumptions that I would have made.  
10 You're asking whether I was asked by counsel to make  
11 certain assumptions?

12 Q. Correct.

13 A. Not that I can recall.

14 Q. And then in paragraph 8, you state  
15 that "the trading behaviors of Mr. Costolo, Mr. Noto  
16 and other Twitter executives...are consistent with  
17 and reflective of economically rational trading  
18 behaviors of executives in newly public companies  
19 based on diversification, liquidity and signaling  
20 reasons."

21 Do you see that?

22 A. I do, yes.

23 Q. Can you define "diversification" for  
24 me, as you've used the term here.

25 A. Yes. So broadly speaking, in layman's

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1 terms, not having all of your eggs in one basket.  
2 So there's a large literature in financial economics  
3 on the benefits of having multiple assets in your  
4 portfolio that are not all perfectly correlated with  
5 each other. And that's generally what I'm talking  
6 about here.

7 **Q. Could you define for me "liquidity" as**  
8 **you've used it here.**

9 A. Yes. So generally speaking, liquidity  
10 would be having assets that would allow you to  
11 consume other things or spend money in a fairly  
12 timely manner. So more liquid assets would be  
13 assets like cash and liquid securities that would be  
14 relatively easy to sell and use for consumption or  
15 other purposes.

16 **Q. And then "signaling reasons," what do**  
17 **you mean by that term?**

18 A. Yes. So executives' trading behavior  
19 is publicly observed by investors within two  
20 business days of those trades. So executives  
21 recognize that their trades will be observed by  
22 people outside the firm. And there's a fair bit of  
23 empirical evidence that that trading behavior can  
24 signal information to investors.

25 **Q. And then would you define, please, the**

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1 term you've used here, "economically rational."

2 A. Yes, so economically rational would be  
3 based on a large literature in financial economics  
4 and personal financial planning for the types of  
5 motivations and the types of reasons why executives  
6 might want to sell stock over time, recognizing the  
7 large portion of their compensation comes in the  
8 form of equity and recognizing there will be these  
9 various incentives from diversification, liquidity  
10 and signaling to sell stock or to trade in the  
11 company's stock.

12 Q. Is "economically rational" a term of  
13 art?

14 A. I wouldn't call it a term of art. I  
15 would say it doesn't have a specific definition, but  
16 it's certainly a term that's used a lot in  
17 economics, finance and accounting research.

18 Q. Does it mean that the executive has  
19 profited financially from a certain trading  
20 behavior?

21 A. "Economically rational" is broader  
22 than that, so it's broader than just profiting off  
23 of certain behavior. It's certain behaviors that  
24 will make -- broadly speaking, make the executive  
25 better off.

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1 Q. Is it always self-interested?

2 MR. YOUNGWOOD: Objection to form.

3 THE WITNESS: Certainly in the context  
4 I'm using it here, it is, but others may have  
5 different definitions for that.

6 BY MS. CONN:

7 Q. So you've told me that economically  
8 rational behavior is behavior that makes the  
9 executive better off, but doesn't have a specific  
10 definition.

11 A. Well, it certainly depends on the  
12 context. So "economically rational" can apply to a  
13 wide array of topics. It's not a term that's used  
14 specifically for executive trading behavior. It's  
15 used to describe all sorts of actions that are taken  
16 by not only executives, but individuals and all  
17 types of people. So it's a very, very, very broad  
18 term.

19 Q. Nearly anything could fit in that  
20 definition; is that what you're saying?

21 A. No, that is not what I'm saying. I'm  
22 saying that it applies to a lot of decisions that  
23 individuals make in all sorts of settings.

24 Q. Is it subjective?

25 A. It has -- it has a lot of economic

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1 structure, but it doesn't have a precise definition  
2 in part because it depends on the context.

3 Q. When you say that the trading  
4 behaviors of the defendants "are consistent with and  
5 reflective of economically rational trading  
6 behaviors," are you using "economically rational" as  
7 non-fraudulent -- to mean non-fraudulent?

8 A. In the context that I'm using it,  
9 it's -- it's -- I'm using it as, yes, not being  
10 fraudulent.

11 Q. Do you believe it's possible for a  
12 person with fraudulent intent to behave in an  
13 economically irrational manner?

14 A. I'm going to need that one back again.

15 Q. Do you believe it's possible for a  
16 person with fraudulent intent to behave in an  
17 economically irrational manner?

18 A. With fraudulent intent to behave in an  
19 economically irrational behavior. I mean, anybody  
20 can behave in an economically irrational behavior,  
21 but, again, it depends on the context. So certainly  
22 anything is possible.

23 Q. Would you agree that whether a  
24 person's trading behavior is economically rational  
25 is not dispositive on the issue of what their intent



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1 is?

2 A. Well -- yeah, so the point that I'm  
3 making here is, in the context of economically  
4 rational, that the behavior that I observe is  
5 consistent with what I would expect people to be  
6 doing in the absence of any fraudulent activity.

7 Q. Are you, in fact, opining on what  
8 Mr. Costolo's intent was at any particular point in  
9 time?

10 MR. YOUNGWOOD: Objection to form.

11 THE WITNESS: I don't know

12 Mr. Costolo's state of mind, no.

13 BY MS. CONN:

14 Q. Are you, in fact, opining on  
15 Mr. Noto's state of mind at any particular point in  
16 time?

17 A. No.

18 Q. You say here that the trading  
19 behaviors of Mr. Costolo and Mr. Noto and other  
20 Twitter executives "cannot be used to support an  
21 allegation of an intent to defraud."

22 Do you see that?

23 A. I do.

24 Q. Are you opining on the relevance of  
25 this evidence?

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1           A.       Well, I'm not exactly sure what you  
2       mean by "relevance," but the -- to sort of reiterate  
3       the point I made a few minutes ago, that because  
4       their behavior is consistent with what I would  
5       expect these executives to be doing in the absence  
6       of the allegations to defraud, I don't see how one  
7       would then be able to use it in and of itself to  
8       support an allegation to defraud.

9           Q.       The trading -- so if I understand your  
10      testimony, the trading behavior standing alone is,  
11      in your opinion, not evidence of a fraudulent  
12      intent?

13          A.       Well, again, so my view is that it's  
14      consistent with what I would expect to observe in a  
15      world where there was no intent to defraud. And so  
16      in and of itself, I don't see how it can be used as  
17      evidence in support of an intent to defraud.

18          Q.       Is -- withdraw that.

19                    You are not -- withdraw that.

20                    Are you offering an opinion that  
21      defendants did not act with an intent to defraud?

22          A.       No, I can't offer that opinion. I  
23      didn't -- I didn't -- no.

24          Q.       And are you -- are you offering an  
25      opinion as to the inference the jury should draw

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1 from the defendants' trading behavior?

2 A. I mean, I'm certainly not telling the  
3 jury what inference to draw. I mean, I'm providing  
4 some, I think, context in which to make decisions,  
5 but I can't tell the jury what to decide.

6 Q. Is it possible for someone with a  
7 fraudulent intent to also be acting in an  
8 economically rational manner?

9 A. Is it possible? I mean, anything's  
10 possible.

11 Q. So someone with a fraudulent intent  
12 can behave in an economically rational manner;  
13 correct?

14 A. I mean, it would depend on the  
15 context. It would depend on what the cost and  
16 benefits are of the different behaviors. I mean,  
17 I'd have to put it in context.

18 Q. Well, if I understand what your  
19 testimony is, fraudulent -- a fraudulent -- someone  
20 acting with fraudulent intent is not always acting  
21 in an economically rational manner.

22 MR. YOUNGWOOD: Objection to form.

23 THE WITNESS: Are they always acting  
24 in an economically rational manner? I mean,  
25 again, it would depend on context, but you

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1           could certainly come up with a scenario where  
2           an intent to defraud was not economically  
3           rational.

4       BY MS. CONN:

5           **Q.       And when this matter -- when this**  
6       **matter proceeds to trial, who do you understand will**  
7       **decide whether or not the defendants acted with**  
8       **fraudulent intent?**

9                       MR. YOUNGWOOD:   Objection to form.

10                      THE WITNESS:   I would assume the  
11                      court, the judge and the jury.

12                      MS. CONN:   It's been a little less  
13                      than an hour, but why don't we take a break  
14                      because I'm about to get into the detail of  
15                      his opinions.

16                      MR. YOUNGWOOD:   Okay.

17                      THE VIDEOGRAPHER:   The time right now  
18                      is 9:32 a.m. and we're off the record.

19                      (Recess from the record.)

20                      THE VIDEOGRAPHER:   The time right now  
21                      is 9:45 a.m. We're back on the record.

22       BY MS. CONN:

23           **Q.       Welcome back, Professor Guay. You**  
24       **understand you're still under oath?**

25           A.       Yes.

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1 Q. Okay. So we were discussing the  
2 summary of opinions at paragraph 8 of your report,  
3 which is Exhibit Henderson 2. Could you turn back  
4 to that paragraph, please.

5 A. Sure.

6 Q. In the first bullet point here, you  
7 write that "The observed timing and magnitude of  
8 Mr. Costolo's transactions are consistent with  
9 commonly observed patterns of executives in newly  
10 public companies trading with the goal of  
11 diversification and/or seeking to divest large and  
12 concentrated portfolio holdings that have  
13 accumulated as a result of pre-IPO equity  
14 compensation or large onetime equity grants."

15 Do you see that?

16 A. I do.

17 Q. Is this an opinion that you intend to  
18 offer at trial?

19 A. If I'm asked to offer it, I would.

20 Q. And which transactions are you  
21 referring to here?

22 A. Mr. Costolo's transactions between the  
23 time of Twitter's IPO and the time of his retirement  
24 or -- yeah, his stepping down as CEO.

25 Q. Did you make any determination one way

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1 or the other whether those sales were actually for  
2 diversification purposes?

3 A. What do you mean by "determination"?

4 Q. Well, I think you told me that you  
5 didn't actually review his financial records; is  
6 that right?

7 A. I don't have his personal financial  
8 records. I can see a fair bit of his financial  
9 information based on public documents.

10 Q. So do you know whether or not those  
11 trades were actually for purposes of  
12 diversification?

13 A. Well, unless he sold the stock and  
14 immediately bought Twitter stock again, they were  
15 for diversification. Certainly they diversified his  
16 portfolio, that I can say.

17 Q. In the second bullet point, you write,  
18 "Mr. Costolo's stock sales in the months prior to  
19 the class period were not 'extraordinary' and did  
20 not eliminate his incentive to sell more vested  
21 shares during the class period. This is confirmed  
22 by my analysis of Mr. Costolo's transactions  
23 relative to transactions of CEOs of comparable  
24 firms."

25 Do you see that?

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1           A.       I do.

2           **Q.       Is this an opinion you intend to offer**  
3 **at trial?**

4           A.       If I'm asked to offer it, I would.

5           **Q.       Are you referring here to**  
6 **Mr. Costolo's sale of over \$32 million worth of**  
7 **Twitter stock?**

8           A.       His stock sales in the month prior to  
9 the class period, yeah. I don't recall the precise  
10 dollar amount, but that's roughly correct.

11          **Q.       Okay. Is it your understanding that**  
12 **Professor Henderson has opined Mr. Costolo had no**  
13 **incentive to sell in the months prior to the class**  
14 **period?**

15          A.       Is it -- can I have that back again.

16          **Q.       Sure.**

17                   MS. CONN: Would you read that back.  
18                   (Record read.)

19                   THE WITNESS: Had no incentive to sell  
20 in the months prior to the class period. I  
21 think Professor Henderson, if I remember his  
22 report correctly, opines that Mr. Costolo  
23 would have some incentive to sell prior to  
24 the class period.

25

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1 BY MS. CONN:

2 Q. Is an incentive to sell different than  
3 a need to sell?

4 MR. YOUNGWOOD: Objection to form.

5 THE WITNESS: I'm not sure exactly  
6 what you mean by "a need to sell." I mean,  
7 is it an emergency or -- I'm not sure what  
8 you mean by "need."

9 BY MS. CONN:

10 Q. Well, let me ask it this way: Did you  
11 make any determination whether or not \$32 million  
12 was sufficient to fund Mr. Costolo's consumption for  
13 a six-month period?

14 A. I do not know that, no.

15 Q. You also say here that you arrived at  
16 that conclusion based on a comparison of the trading  
17 of CEOs of comparable firms to Mr. Costolo's  
18 trading; correct?

19 A. Correct.

20 Q. And is that analysis or comparison  
21 something you intend to present at trial?

22 A. If I'm asked to, I would.

23 Q. In the third bullet point, you say,  
24 "Professor Henderson's characterization of the stock  
25 sales of 'other Twitter insiders' as 'extraordinary'



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1 is misleading."

2 Do you see that?

3 A. I do.

4 Q. Is that an opinion you intend to offer  
5 at trial?

6 A. If I'm asked to offer it, I would.

7 Q. And, again, who are the "other Twitter  
8 insiders" that you're referring to here?

9 A. Well, this is Professor Henderson's  
10 term. And I think it's a little bit confounded in  
11 the sense that -- that the "other Twitter" -- I  
12 mean, I think what he's talking about is a broader  
13 group of Twitter executives than Mr. Costolo and  
14 Mr. Noto and some of the other ones that he talked  
15 about in his report.

16 But as I recall, he actually includes  
17 the trades of those executives in with his  
18 "other...insiders," so I'm not sure it's strictly  
19 "other...insiders" -- "Twitter insiders," but I  
20 think that's what he means by that.

21 Q. Okay. It's your understanding that  
22 that's the aggregate sold by Twitter employees  
23 during that period; is that --

24 A. Yes, I think if the "other" term -- if  
25 the "other" word wasn't in there, it would be a more

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1 accurate description.

2 Q. Okay. Do you disagree that, in  
3 aggregate, Twitter insiders sold \$450 million in  
4 stock during the time frame Professor Henderson was  
5 looking at?

6 MR. YOUNGWOOD: Objection to form.

7 THE WITNESS: I'm not sure what time  
8 frame -- are you talking -- what time frame  
9 are you referring to there?

10 BY MS. CONN:

11 Q. Well, do you disagree with the numbers  
12 that Professor Henderson reported for aggregate  
13 insider sales?

14 A. Yes, so I -- my understanding -- I  
15 think I understand that -- the database he used to  
16 get those numbers, and I haven't independently  
17 verified whether those numbers are correct or not.

18 Q. You don't know one way or the other?

19 A. I have not analyzed -- my  
20 understanding -- my recollection is that we tried to  
21 verify his numbers using his database, but that we  
22 didn't try to independently recreate those numbers  
23 based on SEC filings.

24 Q. When you say "his database," what are  
25 you referring to?

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1           A.       I believe, if I remember correctly,  
2       that either in Professor Henderson's report or his  
3       backup support, he indicates where he gets those  
4       trades. So I don't think he's going out and  
5       collecting all the Form 4s or all those executives  
6       for months and months. I think he's using a  
7       database -- or a website, if I remember correctly,  
8       that summarizes sales for all kinds of companies.

9           **Q.       The fourth bullet point here in**  
10       **paragraph 8 is that the cancellation of Rule 10b5-1**  
11       **plans by Twitter executives "was not 'suspicious'."**

12                   **Is that an opinion you intend to offer**  
13       **at trial?**

14           A.       If I'm asked to offer it, I would.

15           **Q.       And what do you mean by "suspicious"?**

16           A.       Well, that is Professor -- I think  
17       Professor Henderson's term, "suspicious." So he had  
18       various parts of his report where he referred to, I  
19       think, if I remember correctly, any cancellation of  
20       a Rule 10b-5 trading plan is inherently suspicious,  
21       and I'm responding to that opinion.

22           **Q.       Are you using the word "suspicious"**  
23       **the same way Professor Henderson used it?**

24           A.       I'm not sure exactly how he's used it,  
25       but, I mean -- I guess broadly, yes. Yes, I think

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1 broadly we're probably using it in the same way.

2 Q. Okay. So I'll ask you again.

3 In what way are you using that term?

4 A. So this would be, again, I think  
5 related to the earlier opinions we've talked about  
6 where the cancellation of this -- the 10b5-1 trading  
7 plans by the Twitter executives during the class  
8 period, at least in my opinion, is consistent with  
9 what I would expect executives to do from a -- in  
10 this sense, in this signaling respect, was  
11 consistent with what I would expect them to do given  
12 the situation at the time and, therefore, the 10b5-1  
13 plan cancellation is not inherently suspicious.

14 Q. Is whether or not the cancellations  
15 were suspicious something that is context-dependent?

16 MR. YOUNGWOOD: Objection to form.

17 THE WITNESS: Whether -- this is a  
18 general statement outside -- hypothetical  
19 outside -- outside of this matter or --

20 BY MS. CONN:

21 Q. Well, you said it was what you  
22 expected the executives to do given the situation at  
23 the time. So I'm just asking you -- you testified  
24 that it was consistent with what you would have  
25 expected the executives to do "given the situation

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1 at the time."

2 So I'm just asking you, does that mean  
3 it depends on the context?

4 A. It can, yes.

5 Q. And did it depend on the context in  
6 your -- for purposes of your opinion here?

7 A. Yes. Well, based on my understanding  
8 of the situation in terms of -- and I get into this  
9 in my report, but the media scrutiny and the  
10 situation with these executives and their concerns  
11 about the perception of their trades from -- from  
12 investors, so those are context-specific things that  
13 I thought about when drawing this opinion.

14 Q. In other words, you wanted more  
15 information about what was behind the cancellations?

16 A. Beyond just knowing they canceled  
17 plans?

18 Q. Correct.

19 A. Yes, I investigated other things.

20 Q. Okay. You also say that the  
21 cancellations were consistent with "Twitter  
22 executives being cognizant, and concerned with, how  
23 their actions were perceived by the public."

24 Do you see that?

25 A. I do.

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1 Q. And is that an opinion you intend to  
2 offer at trial?

3 A. If I'm asked to, I would.

4 Q. Do you intend to offer the opinion  
5 that that is actually what -- sorry. Withdraw that.

6 Do you intend to offer an opinion  
7 about whether Twitter executives were, in fact,  
8 cognizant of, and concerned with, how their actions  
9 were perceived by the public?

10 A. Well, I mean, certainly there are  
11 documents I read that indicated that they seemed to  
12 be cognizant of this, but what was actually their  
13 state of mind in making this decision, I don't know  
14 that.

15 Q. Okay. You agree that you wouldn't be  
16 able to offer an opinion on that; is that right?

17 A. "On that" being?

18 Q. Their state of mind.

19 A. Yes, I would not do that.

20 Q. You also write here that defendants  
21 wanted to "maximize shareholder value by  
22 demonstrating to the public that they believed in  
23 the long-term value of the company."

24 Is that an opinion you intend to offer  
25 at trial?

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1           A.       Well, I think it was -- I think you  
2 maybe -- you added a few words there that I don't  
3 use here. You said the executives "wanted to  
4 maximize shareholder value."

5                   What I say here is it's consistent  
6 with that.

7           Q.       Consistent with the desire to maximize  
8 shareholder value; is that fair?

9           A.       Correct.

10          Q.       Okay. Is that an opinion you intend  
11 to offer at trial?

12          A.       If I'm asked to, I would.

13          Q.       And as before, you wouldn't be able to  
14 tell the jury that that, in fact, was in any  
15 particular defendant's mind at the time; is that  
16 right?

17          A.       Correct.

18          Q.       The fifth bullet point, you write that  
19 "Mr. Costolo and Mr. Noto engaged in trading  
20 behavior during the class period that is  
21 inconsistent with plaintiffs' allegations that they  
22 used allegedly material non-public information to  
23 their benefit."

24                   Do you see that?

25          A.       I do.

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1 Q. Is that an opinion you intend to offer  
2 at trial?

3 A. If I'm asked to, I would.

4 Q. When you say "benefit," do you mean  
5 personal financial benefit?

6 A. In this context, that's what I'm  
7 referring to.

8 Q. Have you read the complaint in this  
9 action?

10 A. I have, yes.

11 Q. Could you tell me where in the  
12 complaint you found allegations that defendants used  
13 material non-public information to their financial  
14 benefit?

15 A. Okay. So let's be clear. When I'm  
16 talking about the "trading behavior," I'm talking  
17 about the trading behavior and the financial benefit  
18 from that. I'm not referring to the plaintiffs'  
19 allegations with that respect.

20 So when I'm talking about -- that the  
21 trading behavior being to their financial detriment  
22 during -- based -- if the plaintiffs' allegations  
23 are correct. So that's what I'm saying here.

24 Q. Okay. You've written here that the  
25 trading behavior is "inconsistent with plaintiffs'



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1     **allegations that they used allegedly material**  
2     **non-public information to their benefit."**

3                     **Do you see that?**

4             A.       Correct. So let me -- maybe I should  
5     correct that prior statement. "To their benefit,"  
6     in this analysis, I'm talking about financial  
7     benefit. If the plaintiffs are talking about some  
8     other kind of benefit, then that wasn't clear to me.

9             **Q.       Is it your understanding, though, that**  
10    **the plaintiffs have alleged that defendants used**  
11    **material non-public information to their benefit?**

12            A.       I mean, I don't know the plaintiffs'  
13    state of mind either, but in these cases, generally,  
14    when I've been involved, there has been some benefit  
15    that the plaintiffs have alleged that the executives  
16    received from the behavior.

17            **Q.       But you've read the complaint;**  
18    **correct?**

19            A.       I have, yes.

20            **Q.       So you know what the allegations are.**

21            A.       I do, yes.

22            **Q.       That doesn't require you to be inside**  
23    **plaintiffs' state of mind; correct?**

24            A.       Well, if the plaintiffs -- well, yeah,  
25    if the plaintiffs are referring to something other

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1     than some -- if they're referring to some kind of a  
2     benefit with which I'm not familiar, then I -- then  
3     I'm not sure what that is.

4             **Q.       Is it your opinion that Mr. Costolo's**  
5     **trading behavior is inconsistent with an allegation**  
6     **of scienter?**

7                     MR. YOUNGWOOD:   Objection to form.

8                     THE WITNESS:   I mean, we talked about  
9             scienter earlier.   I'm not an attorney, so --  
10            I'm an economist, so my opinions relate to  
11            economic behavior and economic incentives.

12           BY MS. CONN:

13            **Q.       Okay.   I think you told me before that**  
14     **you're using "economically rational" and**  
15     **"non-fraudulent" as equivalent terms in your report;**  
16     **true?**

17                    A.       Say that again.

18            **Q.       I said I think you testified already**  
19     **that you're using "economically rational" and**  
20     **"non-fraudulent" equivalently in your report?**

21                    A.       That's correct, yes.   For my purposes,  
22     yes.

23            **Q.       And your opinion is that Mr. Costolo's**  
24     **trading behavior was economically rational; is that**  
25     **fair?**

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1           A.           It's consistent with what I would  
2           expect someone that's economically rational to do.

3           **Q.           And your opinion is that Mr. Noto's**  
4           **trading behavior was consistent with what you would**  
5           **expect of an economically rational actor; is that**  
6           **right?**

7           A.           Well, Mr. Costolo's behavior I  
8           analyzed over a long period of time and lots of  
9           different trading. Mr. Noto's trading was just at a  
10          particular point in time. It was a purchase of  
11          sales during the -- during the class period.

12                       And I point out in my report two  
13          different things. I point out in my report how one  
14          might interpret Mr. Noto's trading behavior in a  
15          world where the plaintiffs' allegations were not  
16          correct and how one might interpret his trading  
17          behavior in a world where the plaintiffs'  
18          allegations are correct.

19          **Q.           Is it your understanding that to**  
20          **demonstrate scienter, plaintiffs must show that a**  
21          **defendant personally benefited from the alleged**  
22          **fraud?**

23          A.           I don't know the answer to that.

24          **Q.           Because you're not an attorney; is**  
25          **that right?**

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1           A.       Well, among other reasons, but, yeah,  
2       I just don't know -- I don't know those legal  
3       issues.

4           Q.       So do you have any -- withdraw that.  
5                    Is it your understanding that to  
6       demonstrate scienter, as that term is used in the  
7       federal securities laws, plaintiffs are required to  
8       show that defendants had a motive to commit the  
9       fraud?

10          A.       I mean, my understanding of those  
11       issues are at a general level. They're not at a  
12       specific legal level.

13          Q.       What is your general understanding,  
14       sir?

15          A.       About the -- what the plaintiffs are  
16       required to do? I mean, from my general experience,  
17       the plaintiffs are -- part of these complaints is  
18       generally to show that the executives had some  
19       motive to engage in the behavior.

20          Q.       Do you know whether the court before  
21       whom this matter is pending has opined on whether  
22       plaintiffs are required to show the defendants had a  
23       motive to commit fraud?

24          A.       I don't recall.

25                   MR. YOUNGWOOD: Objection.

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1 BY MS. CONN:

2 Q. You've read the court's order and the  
3 motion to dismiss; correct?

4 A. I believe I have, yes.

5 Q. The sixth bullet here is "Professor  
6 Henderson's 'seven hallmarks of Rule 10b5-1 plans'  
7 are invented by him and are arbitrary, unnecessary  
8 conditions for Rule 10b5-1 plans, and do not appear  
9 to be based on scientific criteria or empirical  
10 research."

11 Do you see that?

12 A. I do.

13 Q. Is that an opinion you intend to offer  
14 at trial?

15 A. If I'm asked to, I would.

16 Q. Has any court ever agreed with you on  
17 that issue?

18 MR. YOUNGWOOD: Objection to form.

19 THE WITNESS: Have they agreed with me  
20 that Professor Henderson's hallmarks are  
21 invented by him?

22 BY MS. CONN:

23 Q. And that they are arbitrary and  
24 unnecessary conditions for a Rule 10b5-1 plan.

25 A. Has any court agreed with me? Not

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1 that I'm aware of.

2 Q. Has any court ever disagreed with you?

3 A. Not that I'm aware of.

4 Q. So do these six bullet points  
5 represent the opinions you are prepared to offer at  
6 trial?

7 A. Does it represent --

8 Q. The opinions you are prepared to offer  
9 at trial.

10 A. It's a summary of those opinions, yes.

11 Q. Do you intend to offer an opinion at  
12 trial as to whether defendants are liable for  
13 securities fraud?

14 A. No.

15 Q. Do you intend to offer an opinion  
16 about -- at trial about Mr. Costolo's subjective  
17 state of mind?

18 A. No.

19 Q. Do you intend to offer an opinion at  
20 trial about Mr. Noto's subjective state of mind?

21 A. No.

22 Q. You don't know what the actual mental  
23 state of either defendant was; correct?

24 A. Correct.

25 Q. I'm sorry.

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1                               Either individual defendant.

2                   A.       Correct.

3                   Q.       Do you intend to offer an opinion as  
4 to Mr. Costolo's credibility at trial?

5                   A.       No.

6                   Q.       Do you intend to offer an opinion as  
7 to Mr. Noto's credibility at trial?

8                   A.       No.

9                   Q.       Do you intend to offer an opinion as  
10 to whether defendants' statements made during the  
11 class periods were false or misleading?

12                  A.       No.

13                  Q.       Do you intend to offer an opinion at  
14 trial as to whether defendants' statements made  
15 during the class period were material?

16                  A.       No.

17                  Q.       Do you intend to offer an opinion at  
18 trial as to causation?

19                  A.       Causation of what?

20                  Q.       Any injury or loss --

21                               MR. YOUNGWOOD: Objection to form.

22 BY MS. CONN:

23                  Q.       -- to plaintiffs.

24                  A.       No.

25                  Q.       Do you intend to offer an opinion at

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1 trial as to damages?

2 A. No.

3 Q. You have submitted a report in  
4 rebuttal to Professor Henderson; correct?

5 A. I have.

6 Q. Do you plan to offer a rebuttal to any  
7 opinions stated by plaintiffs' other experts?

8 A. No.

9 Q. Have you read the opinions of  
10 defendants' other experts in this matter?

11 A. I don't believe so, no.

12 Q. If I give you the names, will that  
13 refresh your recollection?

14 A. It may.

15 Q. Have you read Professor Gompers'  
16 report in this matter?

17 A. No.

18 Q. Dr. Madansky's?

19 A. No.

20 Q. Mr. Dirk's?

21 A. No.

22 Q. Mr. Coates'?

23 A. No.

24 Q. Dr. Fader?

25 A. No.



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1 Q. Did you rely on any of defendants'  
2 other experts in forming your opinions in this  
3 matter?

4 A. No.

5 Q. All right. Let's turn, please, to  
6 paragraph 20 of your report. Here in paragraph 20  
7 you write, "Empirical evidence indicates that large  
8 equity positions can create incentives for  
9 executives to reduce firm risk in ad hoc ways and to  
10 shy away from risky strategies and decisions that  
11 would enhance firm value."

12 Do you see that?

13 A. I do.

14 Q. Can you explain what you mean by that  
15 statement.

16 A. Yes. So providing executives with  
17 equity compensation is a -- widely considered to be  
18 a sound corporate governance practice and  
19 compensation practices. And the reason is to try to  
20 tie the executives' wealth to shareholder value.

21 And you can have equity incentives  
22 that are too low or too high. So if they're too  
23 low, the executive might not internalize the  
24 shareholders' interest enough; and if they're too  
25 high, the executives can become overly risk-averse,

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1 again for this diversification reason that they have  
2 all of their eggs in one basket and might behave in  
3 ways that are, again, counter to shareholders'  
4 interests because they shy away from risk.

5 **Q. And are you stating that as a general**  
6 **proposition?**

7 A. Yes. I mean, it's based on a large  
8 volume of empirical evidence and theoretical work as  
9 well.

10 **Q. And so would that also have been**  
11 **applicable at Twitter in late 2014 and 2015?**

12 A. It's a broad statement that applies to  
13 executives and firms in general.

14 **Q. You don't have any evidence or opinion**  
15 **that it didn't apply at Twitter in that time period,**  
16 **do you?**

17 A. I don't have any evidence that it  
18 didn't apply, no.

19 **Q. Okay. I want to ask you about**  
20 **Mr. Noto's purchases of Twitter stock during the**  
21 **class period.**

22 **Would you turn, please, to**  
23 **paragraph 92 of your report.**

24 A. Okay.

25 **Q. So Mr. Noto purchased roughly 12,000**

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1 shares of Twitter stock during the class period; is  
2 that correct?

3 A. About 13.3 thousand shares.

4 Q. 13.3. Okay.

5 And that was roughly 1 percent of his  
6 total Twitter holdings at the time; is that right?

7 A. I don't recall.

8 Q. Let me show you Professor Henderson's  
9 report, which has previously been marked as  
10 Henderson 1.

11 (Exhibit 1, Previously marked.)

12 BY MS. CONN:

13 Q. Can you turn to page 44, please.

14 A. Okay.

15 Q. Do you see where Professor Henderson  
16 reports that "Mr. Noto beneficially owned 1,379,963  
17 shares of Twitter stock" at that time?

18 A. I do see that.

19 Q. And he cites to a Form 4 dated May 5,  
20 2015.

21 Do you see that?

22 A. I do.

23 Q. Do you have any reason to believe that  
24 number is not accurate?

25 A. I do.

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1 Q. You do?

2 A. Well, I mean, I think it's misleading.

3 Q. Well, I'm just asking you if you have  
4 any reason to believe that Mr. Noto did not  
5 beneficially own 1,379,963 shares at the time.

6 A. Well, yeah, I don't have the proxy  
7 statement in -- I don't have the proxy statement in  
8 front of me, but most of those shares were unvested.

9 Q. Okay. Most of those --

10 A. In fact, they all may have been on  
11 that date.

12 Q. -- 1.4 million shares?

13 A. Most of those shares would have been  
14 unvested and not saleable and not liquid.

15 Q. But you don't disagree that 13,000  
16 shares is roughly 1 percent of his total holdings,  
17 do you?

18 A. You're talking about the -- his liquid  
19 holdings, his vested holdings? You're including --

20 Q. Total holdings, sir.

21 A. -- unvested equity as well?

22 Q. Uh-huh.

23 A. We can do the math. Let's see. It  
24 would be roughly 1 percent of his total holdings,  
25 yes, again, including all the unvested equity.

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1 Q. You're not opining that an executive  
2 who purchases the equivalent of 1 percent of his  
3 total holdings is absolved of any fraudulent intent  
4 by doing so, are you?

5 A. As a general matter?

6 MR. YOUNGWOOD: Objection to form.

7 BY MS. CONN:

8 Q. Correct.

9 A. This is a hypothetical or this is  
10 just --

11 Q. I'm just asking if you're opining that  
12 a small purchase -- withdraw that -- a purchase of  
13 any size absolves an executive of any fraudulent  
14 intent they might have.

15 A. I mean, as you worded it, I mean,  
16 those would be two separate things.

17 Q. You're not opining in this case that  
18 to the extent Mr. Noto had a fraudulent intent, he's  
19 absolved of that by making this purchase, are you?

20 A. I mean, I assume we're using the word  
21 "absolved" -- how are you using the word "absolved"?

22 Q. It doesn't negate his intent.

23 A. Again, go back to his state of mind, I  
24 guess. I don't know Mr. Noto's state of mind.

25 Q. So in formulating your opinion that --

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1 regarding Mr. Noto's lack of fraudulent intent based  
2 on his share purchases during the class period, did  
3 you consider whether he was actually in possession  
4 of material non-public information at the time?

5 A. No, so my analysis here is simply to  
6 point out that if the plaintiffs' allegations are  
7 correct, that purchasing shares would have cost him  
8 financially. That's what I've done and that's  
9 essentially what I'm opining.

10 Q. Okay. So just to be clear, if  
11 plaintiffs' allegations are correct that Mr. Noto  
12 was acting with fraudulent intent, what -- that  
13 share purchase would not negate his fraudulent  
14 intent; correct?

15 A. What I've done here in my analysis is  
16 I've essentially said if the plaintiffs' allegations  
17 are correct, the Twitter stock price was inflated  
18 during the class period, that buying shares which  
19 were twice his annual salary would have cost him a  
20 fair bit of cash and lost profit by doing that.  
21 That's what I've done.

22 Q. But you're not saying that that  
23 necessarily means he wasn't acting with fraudulent  
24 intent.

25 A. I'm saying it's inconsistent with the

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1 plaintiffs' allegations.

2 Q. Oh, I thought you assumed that the  
3 plaintiffs' allegations were true.

4 A. Well, if the plaintiffs' -- if the  
5 plaintiffs are -- if the plaintiffs' allegations are  
6 correct, this would have been costly.

7 Q. Would have been costly for Mr. Noto.

8 A. Would have been costly for Mr. Noto.

9 Q. And that's all?

10 A. Primarily as a summary, yes, with  
11 respect to that purchase.

12 Q. I'd like to show you what's previously  
13 been marked as Exhibit 102.

14 (Exhibit 102, Previously marked.)

15 MS. CONN: For the record, Exhibit 102  
16 is a March 10, 2015, e-mail between Anthony  
17 Noto and Jeff DeJelo bearing Bates  
18 TWTR\_SHEN\_00262575 through 2578.

19 BY MS. CONN:

20 Q. Is this one of the documents you  
21 reviewed in preparing your report, sir?

22 (Pause.)

23 A. It doesn't look familiar. Is it one  
24 that I cite as a document considered?

25 Q. No, it is not.

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1 A. It's not?

2 Q. It is not.

3 A. I don't believe I've seen it.

4 Q. Would you look at the second page of  
5 the e-mail, Bates page ending 2576, where Mr. Noto  
6 tells whoever he is sending the e-mail to, "I get  
7 this on a daily basis."

8 Do you see that?

9 A. Where are you again -- oh, I see.  
10 "Check out the below. I get this on a daily basis."

11 Q. Do you see that?

12 A. Okay.

13 Q. And then the attachment is a report of  
14 key metrics.

15 Do you see that?

16 A. Okay. Yeah.

17 Q. So in formulating your opinion that  
18 Mr. Noto's purchases of stock sales during the class  
19 period was inconsistent with an allegation of  
20 fraudulent intent, did you consider that he had  
21 direct knowledge of these key metrics?

22 MR. YOUNGWOOD: Objection to form;  
23 foundation.

24 THE WITNESS: So let me make sure I  
25 understand the date of this e-mail. So am I



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1 correct that this e-mail was sometime in  
2 March of 2015?

3 BY MS. CONN:

4 Q. Uh-huh.

5 A. So that was two months before his  
6 purchases; is that correct?

7 Q. That is correct.

8 A. Okay. So let me see what this says.  
9 (Pause.)

10 A. Okay. What is the question?

11 Q. The question is, in formulating your  
12 opinion that Mr. Noto's purchases of stock sales  
13 during the class period was inconsistent with an  
14 allegation of fraudulent intent, did you consider  
15 that he had direct knowledge of these key metrics?

16 A. I don't know -- I mean, I don't know  
17 what any of these things mean.

18 Q. Does it affect your opinion one way or  
19 the other that Mr. Noto received a daily report of  
20 key metrics?

21 MR. YOUNGWOOD: Objection to form.

22 THE WITNESS: I mean -- yeah, I don't  
23 know what any of these mean. I assume there  
24 are key metrics coming in to the executives  
25 all the time.

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1 BY MS. CONN:

2 Q. Is that -- is that a no?

3 A. Is it -- that this -- that, what,  
4 knowing this wouldn't have influenced my opinion?

5 Q. Correct.

6 A. Yeah, because I don't know what this  
7 means.

8 Q. Okay. I'd like to show you what has  
9 previously been marked as Exhibit 309.

10 (Exhibit 309, Previously marked.)

11 MS. CONN: Exhibit 309, for the  
12 record, is a one-page e-mail from Dick  
13 Costolo to Anthony Noto dated February 5th,  
14 2015, bearing Bates TWTR\_SHEN\_00193273.

15 BY MS. CONN:

16 Q. Is this a document that you considered  
17 in formulating your report, sir?

18 A. I recall reading this one, yes.

19 Q. In formulating your opinion that  
20 Mr. Noto's stock purchases during the class period  
21 were inconsistent with an allegation of fraudulent  
22 intent, did you consider that he told Mr. Costolo at  
23 the start of the class period that they had bought  
24 themselves some time?

25 MR. YOUNGWOOD: Objection to form.

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1                   THE WITNESS: Again, I don't know what  
2                   these things mean. I mean, my analysis with  
3                   Mr. Noto's shares was pretty straightforward.  
4                   I mean, under the plaintiffs' allegations  
5                   Twitter's stock price is inflated. And I  
6                   simply pointed out that by buying those  
7                   shares, that that was financially costly to  
8                   him.

9                   BY MS. CONN:

10                  **Q.           So this document is irrelevant to your**  
11                  **opinion; is that true?**

12                  MR. YOUNGWOOD: Objection to form.

13                  THE WITNESS: Irrelevant to that  
14                  opinion, yes, because that opinion doesn't  
15                  require any of these e-mails. It's a  
16                  calculation.

17                  BY MS. CONN:

18                  **Q.           If you assume Mr. Noto was in**  
19                  **possession of negative material non-public**  
20                  **information at the time of his purchases, does that**  
21                  **change your opinion at all?**

22                  A.           No, I -- well, my opinion is in a  
23                  world where the plaintiffs' allegations are correct  
24                  and Twitter's stock price is inflated, which is I  
25                  think what you're asking, my calculations simply

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1 show that it was financially costly to purchase  
2 shares at an inflated stock price.

3 **Q. And that is true whether or not he had**  
4 **a fraudulent intent; is that what you're saying?**

5 A. Well, again, I'm not opining on his  
6 state of mind. I'm taking the plaintiffs'  
7 allegations as being correct for a moment in saying  
8 Twitter's stock price was inflated, would he have  
9 suffered financially from buying shares at an  
10 inflated stock price.

11 **Q. Do you have any opinion as to why**  
12 **Mr. Noto did not sell shares during the class**  
13 **period?**

14 A. Well, I mean, I know his -- some of  
15 the situation -- I know the situation related to his  
16 stock. And I think all of it was unvested at the  
17 beginning of the class period, so it wouldn't have  
18 been saleable. Some of it vested during the class  
19 period.

20 **Q. Are you aware of whether Mr. Noto had**  
21 **a 10b5-1 plan during the class period?**

22 A. I'm pretty sure that I know he did  
23 not.

24 **Q. Would that have affected his ability**  
25 **to sell Twitter shares during the class period?**

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1           A.           Would what have affected it?

2           **Q.           The fact that he did not have a**  
3 **Rule 10b5-1 plan in place.**

4           A.           Well, my understanding is Twitter had  
5 a policy that required trades by these types of  
6 executives be through a 10b5-1 plan and that they  
7 also required it to be set up a quarter before the  
8 trades took place. So we'd have to think about the  
9 timing of when he might have set up a plan and when  
10 it might have made its first trades.

11           **Q.           I'd like to show you what -- I do not**  
12 **believe this has been marked yet, so we will mark it**  
13 **Guay Exhibit 1.**

14                       (Guay Exhibit 1, No Bates numbers,  
15 Academy of Management Article, marked for  
16 identification.)

17                       MS. CONN: For the record, Exhibit  
18 Guay 1 is an article from the Academy of  
19 Management titled, "Is CEO Pay Too High and  
20 Are Incentives Too Low? A Wealth-Based  
21 Contracting Framework."

22                       THE WITNESS: That's correct.

23 BY MS. CONN:

24           **Q.           You're familiar with this document,**  
25 **are you not?**

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1 A. I am.

2 Q. In fact, you're the author of this  
3 document or one of them?

4 A. One of them.

5 Q. So you've previously written with  
6 respect to executive trading -- let me find it.  
7 Page 13 of the article. The page numbers are there  
8 at the top -- the top of the page.

9 You've written about something called  
10 relative risk aversion; is that correct?

11 A. Relative risk aversion, yes, I'm  
12 familiar with that.

13 Q. Okay. And you say here on page 13,  
14 the paragraph starting, "Although outsiders to the  
15 firm can observe from proxy disclosures how much  
16 wealth CEOs have invested in the firm" --

17 Do you see where I'm reading?

18 A. Yes, I do.

19 Q. -- "the...total wealth cannot be  
20 directly observed."

21 Is that still a statement you agree  
22 with today?

23 A. Yes. I mean, certainly by --  
24 certainly based on public information, you wouldn't  
25 be able to do that.

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1           **Q.       So did you do any analysis here of**  
2 **Mr. Noto's total wealth relative to his purchases of**  
3 **Twitter stock during the class period?**

4           **A.       No. That wasn't necessary to draw the**  
5 **opinions that I drew about his trades.**

6           **Q.       And why was that unnecessary, sir?**

7           **A.       Because, again, I mean, what I did**  
8 **with respect to Mr. Noto's trades is simply a**  
9 **calculation that says under the plaintiffs' --**  
10 **assuming the plaintiffs' allegations are correct and**  
11 **Twitter's stock price is inflated, what were the**  
12 **financial losses that Mr. Noto would have suffered**  
13 **by buying shares at inflated price.**

14           **Q.       Do you know how long he held those**  
15 **3,000 shares that he bought during the class period?**

16           **A.       I know he held them I believe at**  
17 **least -- well, I do know he held them until at least**  
18 **the end of class period. Beyond that I'm not sure.**  
19 **I haven't analyzed it.**

20           **Q.       You don't know whether he actually**  
21 **suffered a loss on the purchase of those shares; is**  
22 **that correct?**

23           **A.       Well, in terms of -- in terms of**  
24 **realized, yeah, I don't know.**

25           **Q.       Have you looked at any case law**

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1     **regarding executives who buy shares at inflated**  
2     **prices?**

3             A.       Have I looked at any case law? Maybe  
4     through my work as an expert, I've seen cases with  
5     respect to that, but I can't -- couldn't point you  
6     to anything off the top of my head.

7             Q.       And you don't know what legal  
8     significance an executive's purchases of shares at  
9     inflated prices has; is that true?

10            A.       Say that again.

11            Q.       You don't know what legal significance  
12   it has if an executive purchases shares at inflated  
13   prices; correct?

14            A.       No.

15            Q.       I'd like to show you -- we were  
16   discussing this just a minute ago. It's already  
17   been marked as Exhibit 419.

18                    (Exhibit 419, Previously marked.)

19                    MS. CONN: For the record, Exhibit 419  
20   is Twitter's insider trading policy. It  
21   bears Bates Nos. TWTR\_SHEN\_00329986 through  
22   29986\_0007.

23   BY MS. CONN:

24            Q.       Would you take a look at Exhibit 419,  
25   please.



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1 A. Okay.

2 Q. That is a document you reviewed in  
3 preparing your report; is that correct?

4 A. It is.

5 Q. And I think you discuss this policy a  
6 bit in your report, but would you turn, please, to  
7 page 3 of the document. It's got a Bates number  
8 ending 003.

9 A. Okay. I have it.

10 Q. Is it your understanding, sir, that,  
11 pursuant to this policy, Twitter executives were  
12 required to trade under a 10b5-1 plan?

13 A. Yes, that's my understanding. At  
14 least the senior executives were.

15 Q. When you say "at least the senior  
16 executives," is there a reason you don't think this  
17 applied to all Twitter employees?

18 A. Let me just double-check. Sometimes  
19 these things apply to --

20 Q. Sure.

21 A. -- certain --

22 Q. Take your time and read the document.

23 (Pause.)

24 A. So my reading here would seem to  
25 suggest that it applies to everybody at Twitter.

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1 Maybe there's some other document there that would  
2 exempt some lower-level employees, but...

3 Q. At the very least, even if it only  
4 applied to Section 16 officers, that would include  
5 Mr. Costolo; right?

6 A. That's correct.

7 Q. And it would also include Mr. Noto?

8 A. Yes.

9 Q. Would it include Mr. Dorsey, who was  
10 the chairman of the board at the time?

11 A. It would, yes.

12 Q. Would it include Mr. Bain?

13 A. I believe so, yes.

14 Q. And would it include Ms. Gadde?

15 A. I believe so, yes.

16 Q. So would you agree, sir, that by  
17 canceling their Rule 10b5-1 plans, those individuals  
18 were prohibited from trading in Twitter securities  
19 during the class period?

20 MR. YOUNGWOOD: Objection to form.

21 THE WITNESS: Well, they were -- I  
22 mean, I don't know as if those two things are  
23 correct. Certainly when they canceled the  
24 plan, they would no longer be trading under  
25 that plan. They could have other plans in

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1 place. They could set up new plans. But  
2 certainly when that plan was canceled, they  
3 wouldn't be trading under that plan anymore.

4 BY MS. CONN:

5 Q. Okay. To make it more simple, you  
6 agree that without a Rule 10b5-1 plan in place,  
7 those individuals could not trade in Twitter  
8 securities?

9 A. Based on this insider trading policy,  
10 that's my understanding.

11 (Pause.)

12 Q. Could you turn, please, to  
13 paragraph 30 of your report.

14 A. Okay.

15 Q. You write here that "the SEC has  
16 stated explicitly that canceling a Rule 10b5-1 plan  
17 by itself does not result in liability under  
18 Section 10(b) and Rule 10b5-1."

19 Do you see that?

20 A. I do.

21 Q. What do you mean by the phrase "by  
22 itself"?

23 A. Simply that the -- that the fact that  
24 the -- the fact that the plan is canceled does  
25 not -- I mean, I think it's -- I think it's clear

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1 here. I mean, based on no other information.

2 Q. Are there other facts and  
3 circumstances that might make a cancellation  
4 manipulative?

5 A. It's possible.

6 Q. Do you want to give me any examples?

7 A. Not as I sit here, no.

8 Q. You can't think of any examples in  
9 which an executive who canceled a Rule 10b5-1 plan  
10 might be doing that as a manipulative act?

11 A. I think you'd need to put more  
12 structure on "manipulative."

13 Q. Do you believe that Rule 10b5-1 plans  
14 can be abused?

15 A. Well, you can construct scenarios  
16 where -- where one could argue that they can be  
17 abused. And there's some -- there is some empirical  
18 evidence out there that tries to get at some of  
19 that.

20 Q. What's the empirical evidence that  
21 you're thinking of?

22 A. Well, I mean, the research -- Alan  
23 Jagolinzer has a paper that's published -- in  
24 Management Science, it's published. But, yeah, it's  
25 not so much that the plans are -- I forget the

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1 wording of your question. It's not so much the  
2 plans are being used to engage in fraudulent  
3 activity, but that setting up a plan doesn't mean  
4 that it's some kind of bulletproof, you know,  
5 defense against some allegations.

6 **Q. So you agree with Professor**  
7 **Henderson's statement that "it is important not to**  
8 **treat Rule 10b5-1 trading plans as a carte blanche,**  
9 **get-out-of-jail-free card."**

10 MR. YOUNGWOOD: Objection to form.

11 THE WITNESS: I don't know if I'd word  
12 it that way, but certainly you can construct  
13 scenarios where a 10b5-1 plan is put in  
14 place, but an executive is still trading on  
15 material non-public information.

16 BY MS. CONN:

17 **Q. And you agree with the SEC's statement**  
18 **that scienter remains a necessary element for**  
19 **liability under Section 10(b) of the Exchange Act**  
20 **and Rule 10b-5 thereunder, and Rule 10b5-1 does not**  
21 **change that?**

22 A. I'm not familiar with that -- that  
23 language. Maybe I've read it at some point, but --

24 **Q. I'll represent to you it was in some**  
25 **of the materials you considered.**

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1           A.       Okay.

2           Q.       So do you disagree with that  
3       statement?

4           A.       I have no reason to disagree. I have  
5       no information that would allow me to disagree.

6           Q.       Did you do anything to determine  
7       whether Mr. Costolo was in possession of material  
8       non-public information when he instituted his  
9       Rule 10b5-1 plans?

10          A.       No, that's not something that I would  
11       be -- would be asked to or be able to do.

12          Q.       Did you assume he was not in  
13       possession of material non-public information at  
14       that time?

15          A.       Well, as I talked about -- I mean, I  
16       have sort of two scenarios that I look at in my  
17       report. I look at some scenarios where the  
18       plaintiffs' allegations are not correct, and then I  
19       look at the behavior and see if it's consistent with  
20       what I would expect in that world. And then I look  
21       at some scenarios where plaintiffs' allegations are  
22       correct and see whether it's consistent or  
23       inconsistent with that.

24          Q.       Okay. But just to be clear, I'm  
25       asking you about when he set up the plan, not when

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1 he canceled the plan.

2 A. Right.

3 Q. You understand that happened before  
4 the class period; is that right?

5 A. It did, yes.

6 Q. So is it fair to say you also did not  
7 do anything to determine whether Mr. Costolo was in  
8 possession of material non-public information when  
9 he sold his stock?

10 A. That is not something that I would be  
11 asked to do or would be able to do.

12 Q. Did you assume he was not in  
13 possession of material non-public information at the  
14 time?

15 A. Again, I consider a -- scenarios where  
16 the plaintiffs' allegations are or are not correct.

17 Q. And same question with regard to when  
18 he canceled his plan.

19 Did you do anything to determine  
20 whether Mr. Costolo was in possession of material  
21 non-public information when he canceled his plan?

22 A. Same answer.

23 Q. Did you do anything to determine  
24 whether any other Twitter executive who traded in  
25 Twitter securities during the class period was in

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1 possession of material non-public information?

2 A. Same answer.

3 Q. Same answer being you were not asked  
4 to do that and you --

5 A. I wasn't asked to do it and I wouldn't  
6 be able to do it.

7 Q. When you say you're not able to do  
8 that, can you explain why.

9 A. Yes, so that's, as I understand it, a  
10 key issue, in this case and in most of these  
11 litigations, is that there's an allegation that  
12 there's material non-public information that the  
13 executives have during the class period. And it  
14 requires an analysis of what's material, what's  
15 non-public, what the entire mosaic is. And figuring  
16 that out presumably is going to be the job of the  
17 judge and jury.

18 Q. In any event, it would be beyond your  
19 expertise; is that fair to say?

20 MR. YOUNGWOOD: Objection to form.

21 THE WITNESS: Yes, certainly in this  
22 context.

23 BY MS. CONN:

24 Q. And is it fair to say you also did not  
25 do anything to determine whether any other Twitter



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1 executive who canceled a Rule 10b5-1 plan during the  
2 class period was in possession of material  
3 non-public information at the time of the  
4 cancellation?

5 A. Yes, that's not something I was asked  
6 to do.

7 Q. In paragraph 31 of your report --

8 A. 31, yep.

9 Q. Before we get there, your opinions  
10 regarding the 10b5-1 plans being -- not being  
11 suspicious, is that informed at all by your own  
12 academic research and experience?

13 A. Certainly, yes. I mean, I'm familiar  
14 with literature on 10b5-1 trading plans. I'm  
15 familiar with lots of literature on executive  
16 trading. I've written papers on executive trading,  
17 so, yeah.

18 Q. Let's go to paragraph 31. You write  
19 that if, after initiating a Rule 10b5-1 plan -- I'm  
20 paraphrasing just a bit here -- an insider becomes  
21 aware of material non-public information, "there is  
22 no requirement that the individual halt the sale of  
23 shares or the 10b5-1 plan."

24 Do you see that?

25 A. Let me see --

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1           **Q.       It's about three lines down from the**  
2           **bottom.**

3           **A.       I see.**

4                   (Pause.)

5           **A.       Yes, I do see it.**

6           **Q.       So do you agree that Mr. Costolo was**  
7           **not required to cancel his 10b5-1 plan in**  
8           **February 2015?**

9                   MR. YOUNGWOOD: Objection to form.

10                  THE WITNESS: Certainly not within the  
11                  context of the SEC's requirements with  
12                  respect to the 10b5-1 plans.

13           BY MS. CONN:

14           **Q.       And was the same also true of the**  
15           **other executives who canceled their plans in**  
16           **February 2015?**

17           **A.       Well, I mean, here I'm making the**  
18           simple point that the whole point of a 10b5-1 plan  
19           is that if you set it up at a period when you don't  
20           have material non-public information and then you  
21           set up an automated plan where you're not making any  
22           further decisions, then there's no -- the whole  
23           point of that is that it can just carry out the  
24           trades. And even if you do come into possession of  
25           material non-public information, the trades simply

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1 execute because they were pre-established prior to  
2 having material non-public information. So that's  
3 the whole point of the 10b5-1 trading plan.

4 **Q. Do you believe if the executive came**  
5 **into possession of material non-public information,**  
6 **he might have an incentive to cancel his plan?**

7 A. Well, I don't know -- there certainly  
8 can be an incentive. There can be reasons why the  
9 executive would want to cancel a plan at different  
10 points in time.

11 **Q. And Twitter's -- so going back to the**  
12 **question about whether Mr. Costolo and the other**  
13 **executives were required to cancel their plans in**  
14 **February 2015, was that required under Twitter's**  
15 **insider trading policy, as far as you understand it?**

16 A. Not as far as I understand, no.

17 MS. CONN: Can we take a quick break.

18 MR. YOUNGWOOD: Sure.

19 MS. CONN: We've been going about an  
20 hour.

21 THE VIDEOGRAPHER: The time right now  
22 is 10:48 a.m. We're off the record.

23 (Recess from the record.)

24 THE VIDEOGRAPHER: This marks the  
25 beginning of Media No. 2. The time right now

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1 is 11:02 a.m. We're back on the record.

2 BY MS. CONN:

3 Q. Professor Guay, welcome back from our  
4 break. You understand that you're still under oath?

5 A. Yes.

6 Q. I'd like to direct your attention,  
7 please, to paragraph 41 of your report, which is  
8 Henderson Exhibit 2.

9 A. Okay.

10 Q. In paragraph 41, you write that the  
11 lack of stock sales by the individual defendants  
12 "(as well as the lack of arguments that the  
13 individual defendants received any other financial  
14 benefits from the alleged fraud through bonuses or  
15 other forms of compensation) shows that the  
16 individual defendants received no financial profit  
17 from the fraud plaintiffs allege in this case."

18 Do you see where I'm reading from?

19 A. I do, yes.

20 Q. And that is an opinion you intend to  
21 offer at trial if asked to do so?

22 A. Yes.

23 Q. What do you mean by "financial  
24 benefit" in this context?

25 A. So in this context, it would be -- I

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1 mean, I think pretty straightforward. I mean, it  
2 would be benefits from stock sales, from bonus  
3 payments, from other sorts of financial compensation  
4 or gains that they might have received during the  
5 class period.

6 **Q. So it's monetary?**

7 A. I'm referring to financial benefits as  
8 monetary, yes.

9 **Q. Do you think that executives keeping**  
10 **their jobs is a benefit?**

11 A. Well, it's certainly -- yeah, I mean,  
12 executives often want to keep their jobs, yes, so  
13 that's something that they would probably value in  
14 many cases.

15 **Q. Do you think that keeping Twitter's**  
16 **stock at a high price was a benefit to the**  
17 **executives?**

18 A. Well, that's a harder question to  
19 answer. You have to -- you'd need more context in  
20 terms of how they would have benefited from that.

21 **Q. Do you think it's a benefit to**  
22 **executives to preserve their reputations?**

23 A. Well, as a general matter. I mean,  
24 executives would generally care about their  
25 reputations, yes.

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1           **Q.       How about preserving the reputation of**  
2           **the firm; is that a benefit?**

3           **A.       Well, it could be to the extent that**  
4           **that makes them -- certainly you could think about**  
5           **ways that that makes them better off.**

6           **Q.       Do you think that receiving financial**  
7           **profit from an alleged fraud is the legal standard?**

8                   MR. YOUNGWOOD: Objection to form.

9                   MS. CONN: Let me ask a different  
10           question.

11           BY MS. CONN:

12           **Q.       Do you think that receiving a**  
13           **financial profit from an alleged fraud is a legal**  
14           **requirement to proving securities fraud?**

15           **A.       I don't know.**

16           **Q.       Are you opining that plaintiffs cannot**  
17           **demonstrate scienter because defendants received no**  
18           **financial profit from the alleged fraud?**

19           **A.       No, I'm not making any -- giving any**  
20           **opinion about that beyond what's in my report.**

21           **Q.       You note here that there are no**  
22           **arguments that the individual defendants received**  
23           **any financial benefits from the alleged fraud.**

24                   **Are you opining there is no evidence**  
25           **that they received a financial benefit from the**

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1     **fraud?**

2                     MR. YOUNGWOOD: Objection to form.

3                     THE WITNESS: I don't believe I've  
4                     seen any evidence, but there may be some that  
5                     I haven't seen.

6     BY MS. CONN:

7                     Q.        I guess what I'm trying to understand  
8     in this paragraph is when you refer to "the lack of  
9     arguments," are you referring to plaintiffs'  
10    allegations?

11                    A.        Well, Professor Henderson's report and  
12    plaintiffs' allegations with respect to the -- what  
13    I have here, the financial benefits.

14                    Q.        And where you write here "The absence  
15    of stock sales during the class period," neither  
16    individual defendant had a Rule 10b5-1 plan in place  
17    during the class period; is that correct?

18                    A.        Say that again.

19                    Q.        Neither Mr. Costolo, nor Mr. Noto had  
20    a Rule 10b5-1 plan in place during the class period;  
21    is that correct?

22                    A.        Mr. Costolo did. Mr. Noto did not.

23                    Q.        Mr. Costolo canceled his Rule 10b5-1  
24    plan in early February 2015; is that correct?

25                    A.        That is correct.

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1 Q. And did not enter into a new plan  
2 during the class period; is that correct?

3 A. Yes, let me just make sure on the  
4 dates here as to whether the cancellation -- are you  
5 suggesting the cancellation of the plan was outside  
6 of the class period?

7 Q. To be fair, I think it was a few days  
8 into the class period.

9 A. I believe that's correct.

10 Q. But aside from those few days, as far  
11 as you're aware, Mr. Costolo did not have a  
12 Rule 10b5-1 plan in place during the class period;  
13 is that right?

14 A. Yes, so he set up a 10b5-1 plan  
15 several months earlier and had some trades executing  
16 in that plan. And then there were more trades that  
17 were to be executed during the class period. And  
18 when he canceled shortly into the class period, he  
19 didn't set up another 10b5-1 plan.

20 Q. And as a matter of Twitter's policy,  
21 that effectively made it impossible for him to sell  
22 shares; is that true?

23 MR. YOUNGWOOD: Objection to form.

24 THE WITNESS: Well, I mean, he  
25 could -- I mean, the fact that he didn't set



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1 up another 10b5-1 plan would prevent him from  
2 selling shares. He could have set up another  
3 10b5-1 plan, but he didn't.

4 BY MS. CONN:

5 Q. And the same is true of Mr. Noto;  
6 correct? He could not sell his Twitter shares  
7 because he did not have a Rule 10b5-1 plan in place?

8 A. That's my understanding of the insider  
9 trading policy.

10 Q. Paragraph 42 you go on to say that "In  
11 spite of those facts, Professor Henderson opines  
12 that a lack of stock sales cannot be used to infer  
13 'a lack of scienter'."

14 And then later in that same paragraph,  
15 you also write, "In spite of a lack of financial  
16 benefits obtained from stock sales, the trading  
17 behavior at issue could still be consistent with an  
18 intent to defraud."

19 That's Professor Henderson's opinion.

20 A. Right.

21 Q. Are you equating "scienter" with a  
22 financial motive here?

23 A. Professor Henderson uses the word  
24 "lack of scienter," I believe.

25 Q. Right.

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1 I'm asking, when you say in spite of  
2 the lack of evidence of a financial profit,  
3 Professor Henderson opines that a lack of stock  
4 sales cannot be used to infer a lack of scienter.

5 Are you equating "scienter" with  
6 financial motive?

7 A. Let me just read this carefully.

8 Q. Sure.

9 (Pause.)

10 A. I mean, the two sentences we've read,  
11 I'm just summarizing Professor Henderson's opinion.  
12 I haven't given any of my opinions in those two  
13 sentences.

14 Q. I'm wondering what the significance of  
15 the phrase "in spite of those facts" or "in spite of  
16 a lack of financial benefits" means, as you've used  
17 it here.

18 A. I'm simply pointing out as -- I made  
19 this point in paragraph 41 that I'm not aware of any  
20 financial benefits that were obtained from stock  
21 sales. I'm pointing out that, in spite of that  
22 fact, Professor Henderson draws the inference that  
23 he does.

24 Q. And you're not aware of the legal  
25 significance of the fact that defendants received no

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1 financial profit from their fraud is; correct?

2 A. What the legal significance is?

3 Q. Correct.

4 A. I'm not sure exactly what you're  
5 asking, but I don't think I know what the legal  
6 significance is.

7 Q. You go on to say, in that same  
8 paragraph, paragraph 42, of your report, that the  
9 trading -- "observed trading patterns of the  
10 individual defendants are consistent with and  
11 reflective of economically rational trading  
12 behavior."

13 Do you see that?

14 A. I do.

15 Q. It's true Mr. Costolo did not sell  
16 during the class period; correct?

17 A. Correct.

18 Q. And he did not make a financial profit  
19 as a result of that; correct?

20 A. Well, yeah. With no trades, there  
21 wouldn't be any financial profit or loss.

22 Q. And Mr. Noto also purchased shares  
23 during the class period; correct?

24 A. Well, let me be clear. When my -- the  
25 analysis I do of Professor -- of Mr. Costolo's

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1 trades within the class period -- the point that I'm  
2 making in that analysis is that in a world where  
3 plaintiffs' allegations are correct, his failure to  
4 trade or the cancellation of his plan caused him to  
5 suffer financial losses. So in the world where the  
6 plaintiffs' allegations are correct, then not  
7 trading made him worse off than if he had let those  
8 plans continue.

9 Here I'm talking about just generally,  
10 for the individual defendants, when I look at their  
11 trading patterns over time, they're consistent with  
12 what I would expect in a world where plaintiffs'  
13 allegations are not correct.

14 **Q. So if I'm understanding what you're**  
15 **saying, if plaintiffs' allegations are not correct,**  
16 **the individual defendant's trading behavior can be**  
17 **explained as economically rational?**

18 **A.** In my opinion, in a world where the  
19 plaintiffs' allegations are not correct, the trading  
20 behavior is what I would expect from executives that  
21 are trading for those reasons, yes.

22 **Q. And, yet, if plaintiffs' allegations**  
23 **are correct, then Mr. Costolo's, at a minimum,**  
24 **trading behavior, in your words, made him worse off**  
25 **and would not be economically rational?**

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1           A.       Well, during the class period, I make  
2       the point that if he had let his -- if he had let  
3       his 10b5-1 plan continue to sell shares and the  
4       plaintiffs' allegations are correct, the Twitter  
5       stock price is inflated, then by canceling the plan,  
6       he's foregoing the sales at a higher stock price  
7       than he would otherwise get in the plaintiffs' world  
8       when the stock price eventually drops.

9           **Q.       And that, in your opinion, is**  
10       **economically irrational; true?**

11          A.       No, I did not say that. He's  
12       foregoing -- he's foregoing financial profits. And  
13       that's the -- that's what I draw -- and that would  
14       be inconsistent with the plaintiffs' allegations of  
15       trying to benefit from -- from that -- from their  
16       allegations.

17          **Q.       You are -- you're pointing out that**  
18       **he, Mr. Costolo, by canceling those trades, gave up**  
19       **some potential profits.**

20          A.       If the plaintiffs' allegations are  
21       correct, he could have let those trades go through  
22       at a higher stock price than the stock price at the  
23       end of the class period.

24          **Q.       Do you know, in fact, what the stock**  
25       **price was at the time of those scheduled trades?**

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1           A.           Do I know -- it's knowable. The  
2   10b5-1 plan -- the trades during the class period  
3   would generally be at higher prices than the  
4   trade -- the stock price during the class period  
5   would generally be at a higher price than the stock  
6   price at the end of the class period. I actually  
7   compute those differences in my report.

8           Q.           What I'm trying to get at is, whether  
9   or not the plaintiffs' allegations are correct,  
10   Mr. Costolo -- we know just from looking at  
11   historical stock prices that Mr. Costolo could have  
12   sold those shares at a certain price on a certain  
13   day; correct?

14          A.           I mean, he -- I'm not sure exactly  
15   what you're asking, but he set up a 10b5-1 plan -- I  
16   think it was in August of 2014, and there was a  
17   schedule of trades. And we know what that schedule  
18   of trades was. When you schedule trades, you  
19   don't -- you can't always necessarily execute those  
20   trades on those days. It depends on what's going on  
21   in the market, but the trades would have been  
22   expected to execute over that period of time.

23                       And my point is a simple one, that by  
24   allowing the plan to continue, he would have sold  
25   those shares at a higher price relative to what the

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1 price was at the end of the class period than if he  
2 had canceled that plan.

3 Q. And that's true whether or not  
4 plaintiffs' allegations are true; correct? We know  
5 that just from looking at the historical stock  
6 prices.

7 A. Well, yes, so that's just true based  
8 on the stock prices. The inference of it being  
9 inconsistent with the plaintiffs' allegations would  
10 be that, by doing that, he had some foregone  
11 profits, yes.

12 Q. And that's an inference that you've  
13 drawn from that set of facts; true?

14 A. Yes.

15 Q. If you look, please, at paragraph 46  
16 of your report.

17 A. Okay.

18 Q. You start out by saying, "It is  
19 economically rational and unsurprising that  
20 Mr. Costolo sold stock in the period after Twitter's  
21 IPO in light of his low cash-based and high  
22 equity-based compensation."

23 Do you see that?

24 A. I do.

25 Q. What do you mean by "unsurprising"?

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1 A. Not unexpected.

2 Q. From whose perspective?

3 A. Mine.

4 Q. You go on to say, in that same  
5 paragraph on the next page, page 25, "given his high  
6 concentration of holdings in Twitter stock and  
7 options and relatively low salary compared to his  
8 equity holdings, Mr. Costolo had a strong economic  
9 incentive to sell Twitter stock in the period after  
10 Twitter's IPO."

11 A. I see that.

12 Q. He continued to have a strong economic  
13 incentive to sell Twitter stock during the class  
14 period; correct?

15 A. Are you reading now from somewhere  
16 or --

17 Q. No, I'm just asking you.

18 A. So what was the question again?

19 Q. Sure. Let me break it down a little  
20 bit.

21 So you've stated here, in  
22 paragraph 46, that Mr. Costolo had a "high  
23 concentration of holdings in Twitter stock and  
24 options and [a] relatively low salary compared to  
25 his equity holdings"; correct?



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1 A. Correct.

2 Q. Because of those two factors, he had  
3 what you call "a strong economic incentive to sell  
4 Twitter stock" --

5 A. Correct.

6 Q. -- is that correct?

7 A. Uh-huh.

8 Q. And that was true in the period after  
9 Twitter's IPO?

10 A. Correct.

11 Q. And it was also true during the class  
12 period; correct?

13 A. Yes. So by the class period, he had  
14 sold a relatively small percentage of his portfolio,  
15 but he had retained some 90 percent of the -- of his  
16 Twitter stock holdings as of the class period.

17 Q. He sold -- prior to the class period,  
18 he sold about \$32 million in stock; correct?

19 A. Yes, I think it was about 9 percent of  
20 his stock, so something like that, yes.

21 Q. And that was, in your words,  
22 relatively small?

23 A. It's a relatively small proportion,  
24 9 percent.

25 Q. Do you have a threshold for what

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1     **constitutes a small percentage of someone's**  
2     **portfolio?**

3           A.       I mean, I don't have a specific  
4     number, but 90 -- having -- holding 90 percent of  
5     the stock that you started with at the time that you  
6     started to diversify is still a very high  
7     concentration, certainly much higher than one  
8     would -- one would, you know, like to have based on  
9     principles of financial economics and personal  
10    financial planning.

11           Q.       And that was 9 percent of his total  
12    holdings; is that right?

13           A.       Yes.

14           Q.       Not 9 percent of his vested.

15           A.       That was -- let me just make sure that  
16    we have got the right numbers here.

17                   (Pause.)

18           A.       So that would be based on vested plus  
19    vestings that occurred during the period, yes. So  
20    it would strip out stuff that just never vested.

21           Q.       In paragraph 48, you discuss Twitter's  
22    post-IPO lockup period. And then towards the middle  
23    of the paragraph, you reference an 8-K filing on  
24    April 14, 2014 --

25           A.       Correct.

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1 Q. -- that represented that "Jack Dorsey  
2 and Evan Williams, cofounders of Twitter, and our  
3 chief executive officer, Richard Costolo, have  
4 informed us that they have no current plans to sell  
5 any of their shares of Twitter...stock."

6 Do you see that?

7 A. I do.

8 Q. Is that -- to your understanding, was  
9 that a binding commitment not to sell Twitter stock?

10 A. I'm not aware of any binding  
11 commitment. It is a public disclosure in an SEC  
12 filing, which does carry some weight.

13 Q. It is not a legally binding  
14 commitment; would you agree?

15 A. I'm not aware of a legal binding  
16 commitment, no.

17 Q. If you'd skip ahead to paragraphs 54  
18 and 55 of your report.

19 A. Okay.

20 Q. You write here -- well, you're taking  
21 issue here, fair to say, with Professor Henderson's  
22 statement that Mr. Costolo's sales prior to the  
23 class period were a deviation from his sales during  
24 the months leading up to Analyst Day?

25 A. Yes. He calls it a clear deviation

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1 from the lack of sales.

2 Q. Do you understand that Mr. -- or  
3 Professor Henderson has made a correction to this  
4 section of his report?

5 A. I was -- I think I briefly heard that  
6 when I was prepping here, but I don't know exactly  
7 what his correction was.

8 Q. So I believe he changed "36 months" to  
9 "6 months leading up to Analyst Day."

10 Does that correction change your  
11 opinion at all?

12 A. What --

13 MR. YOUNGWOOD: Objection to form.

14 THE WITNESS: I actually don't know  
15 what his full opinion is now. Just changing  
16 that number -- he's changed the number, but  
17 no other analysis and no other -- that's it,  
18 that's the full extent of the change?

19 BY MS. CONN:

20 Q. Yes.

21 A. So it was like a typo?

22 Q. Yes.

23 A. Wow. Let's see. I need to think  
24 about this.

25 (Pause.)

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1           **Q.       By the way, did you read his**  
2 **deposition transcript?**

3           A.       No.

4           **Q.       Did you ask to see it?**

5           A.       I knew that he was being deposed. I  
6 would have -- I would have -- I would have read it  
7 if it was provided to me, but it wasn't.

8           **Q.       But you didn't ask for it.**

9           A.       I didn't ask for it.

10                   Yes, I mean, my opinion wouldn't  
11 change here. It's still a very misleading thing for  
12 him to say given that, in the six months prior to  
13 Analyst Day, that's essentially from the lockup  
14 period through the end of the -- through the end of  
15 the class period. I don't know when his period ends  
16 now.

17                   But clearly my argument still holds  
18 that this was coming out of an IPO. And a CEO with  
19 a concentrated position with illiquid securities  
20 would be expected to sell during that period. So  
21 there's nothing that that would change about my  
22 opinion.

23           **Q.       Is it fair to say that you take issue**  
24 **with Professor Henderson drawing inferences from a**  
25 **period during which Mr. Costolo, quote, "either**

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1 could not, or would not -- or had committed not to,  
2 sell"?

3 A. Yes, what Professor Henderson seems to  
4 ignore is that this -- the key fact of this case is  
5 that Twitter had just undergone an IPO. And that is  
6 a very different setting than the typical CEO. And  
7 certainly in Mr. Costolo's case, if you're going to  
8 analyze his behavior over time, that's a fact that  
9 is very important.

10 Q. Is it important to your analysis that  
11 Mr. Costolo, quote, "either could not, or had  
12 committed not to, sell stock" during any of that  
13 period?

14 A. Well, it's important in the sense that  
15 it informs my opinion about -- about Mr. Costolo's  
16 expected trading behavior.

17 Q. Do you agree that -- would you agree  
18 that you can't draw an inference about a state of  
19 mind one way or the other during a period when a  
20 person is prohibited from trading?

21 A. I'm not trying to draw opinions about  
22 states of mind here.

23 Q. So you have no opinion on that one way  
24 or the other?

25 A. On Mr. Costolo's state of mind?

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1 Q. No, on the more general proposition  
2 that during a period when someone is prevented from  
3 trading, that affects what inferences you can draw  
4 about their state of mind.

5 A. About their state of mind. I just  
6 don't understand that question.

7 Q. Okay. Do you agree that Mr. Costolo's  
8 trading behavior before the class period was  
9 different from his trading behavior during the class  
10 period?

11 A. I don't know what you mean by  
12 "different," but he didn't trade during the class  
13 period and he didn't trade in the first year or so  
14 after the IPO. And then he traded a few months in  
15 late 2014, when all of his trades occurred. So, I  
16 mean, I talk about all of that in my report and sort  
17 of why I would expect that behavior to have  
18 occurred.

19 Q. Setting aside whether it's consistent  
20 with your expectations, you agree that Mr. Costolo  
21 sold more stock in the months before the class  
22 period than he did during the class period; correct?

23 A. During the class period, he sold zero.  
24 And in the months leading up to, he -- he had some  
25 sales.

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1 Q. He sold \$32 million worth of stock;  
2 correct?

3 A. I think he sold, yes, about 9 percent  
4 of his portfolio.

5 Q. Those are just facts; right? Those  
6 are just numbers?

7 A. They are indeed numbers.

8 Q. And you don't disagree with those  
9 numbers, do you?

10 A. No, I computed -- the 9.2 percent is  
11 my own computation.

12 Q. By the way, when Mr. Costolo and  
13 others announced that they would not sell stock  
14 following -- for some period of months after the IPO  
15 lockup closed, was that an economically rational  
16 decision?

17 A. Well, I mean, I understand -- it's  
18 certainly not surprising that executives might do  
19 that. So, you know, again, this gets back to the  
20 signaling arguments that we were talking about a  
21 little bit earlier on, the way to show your  
22 confidence and strength of the company might be to  
23 tell investors that you're willing to continue  
24 holding shares even after some of the other  
25 executives might be selling their shares.



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1           **Q.       Even if that means foregoing financial**  
2           **profits.**

3           A.       Well, I don't know what you mean by  
4           "financial profits." I'm not aware of any -- any  
5           allegations that Mr. Costolo or anyone else had  
6           material non-public information following the lockup  
7           period.

8                       So the foregoing profits part we were  
9           talking about before stems from an assumption that  
10          the stock is mispriced. So under the plaintiffs'  
11          allegations, the stock is mispriced at a certain  
12          point in time. I don't know of any allegations that  
13          the stock was mispriced following the lockup period.

14          **Q.       Okay. And just to be clear, I'm using**  
15          **"financial profit" in the same way that you've been**  
16          **using it in your report here.**

17          A.       I can appreciate that.

18          **Q.       So I don't know that I got an answer**  
19          **to the question about whether the agreement to hold**  
20          **shares post IPO lockup was an economically rational**  
21          **decision, in your opinion.**

22          A.       Well, it's consistent with -- with  
23          rational economic behavior. If an executive's  
24          intention is to try to send a signal of a founder --  
25          here we have some founders doing the same thing --

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1 if the founders' and CEO's intention is to try to  
2 signal to investors their confidence in the company,  
3 one way to do that would be to commit not to sell  
4 shares. And there have been lots of executives over  
5 time who have committed to not selling shares and  
6 have done it publicly to send that kind of signal.

7 **Q. So is that a yes?**

8 A. It is a, yes, it's consistent. I  
9 think it's consistent with rational economic  
10 behavior.

11 **Q. In paragraph 56 of your report,**  
12 **Exhibit Henderson 2 --**

13 A. 5-6?

14 **Q. 5-6.**

15 A. Yep.

16 **Q. -- you write, "Professor Henderson**  
17 **provides no evidence for the claim that sales prior**  
18 **to the class period provided a cushion for**  
19 **Mr. Costolo's consumption needs."**

20 **Do you see that?**

21 A. I do.

22 **Q. You didn't review Mr. Costolo's**  
23 **personal financial records from that time period,**  
24 **did you?**

25 A. I did not.

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1 Q. So you don't know what other assets he  
2 held at the time?

3 A. I don't know specifically -- no, I  
4 don't know what other assets he held.

5 Q. And did you review any documents  
6 regarding what Mr. Costolo knew at the time about  
7 Twitter's user growth?

8 A. No, not -- nothing specific.

9 Q. You do note that, at the time of the  
10 IPO, Mr. Costolo was earning \$130,000 a year;  
11 correct?

12 A. No, I don't think that's right. I  
13 think -- well, I mean, if you're talking about his  
14 salary, that is correct.

15 Q. Yes, his salary.  
16 His cash salary; is that correct?

17 A. Yes.

18 Q. So you don't think it's a reasonable  
19 conclusion that a sale of \$32 million worth of stock  
20 for someone who's earning \$130,000 in cash would  
21 provide you a substantial cushion for consumption?

22 A. My point here is I don't know if it  
23 does, but Professor Henderson doesn't provide any  
24 evidence of that.

25 Q. You also say, in paragraph 56, that

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1 "Professor Henderson gives almost exclusive  
2 prominence to the consumption motivation, ignoring  
3 that Mr. Costolo's trading pattern was motivated by  
4 other economically rational reasons."

5 Do you see that?

6 A. Yes.

7 Q. You don't actually know what  
8 Mr. Costolo's trades were motivated by, do you?

9 A. I mean, I don't know, again,  
10 Mr. Costolo's state of mind, but I do understand  
11 what economically rational reasons for sales would  
12 be.

13 Q. But you didn't speak to Mr. Costolo,  
14 did you?

15 A. I did not.

16 Q. You didn't review his personal  
17 financial records?

18 A. I did not.

19 Q. You don't know actually how diverse  
20 his portfolio was at the time?

21 A. Not specifically, but unless he had --  
22 unless he was a billionaire outside of Twitter, he  
23 was not well diversified.

24 Q. Do you have any reason to believe that  
25 the need for diversification was urgent?

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1           A.       Well, the need for diversification --  
2   I mean, one doesn't typically describe the need for  
3   diversification as urgent. I mean, if you have a  
4   poorly diversified portfolio, you would generally  
5   like to diversify it. So there's generally no  
6   notion of urgency there.

7           Q.       And your conclusion that  
8   "Mr. Costolo's trading pattern was motivated by  
9   other economically rational reasons, such as  
10   diversification," is that simply based on your  
11   understanding of what an economically rational  
12   executive would do?

13          A.       Well, here I'm simply pointing out  
14   that Professor Henderson, as I say, gives almost  
15   exclusive prominence to the consumption motivation  
16   and that he ignores these other alternatives for  
17   trading behavior, like diversification, liquidity  
18   and signaling.

19          Q.       Right.

20                   And you criticize Professor Henderson  
21   for not having any evidence regarding consumption  
22   needs.

23                   Did you have any evidence regarding  
24   Mr. Costolo's need for diversification?

25          A.       Well, generally, yes. As we've just

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1 discussed, his cash compensation was very low. He  
2 held upwards of \$300-plus million of Twitter stock  
3 that was essentially locked up for a substantial  
4 period of time. So you have an executive with a  
5 substantial amount of firm-specific equity.

6 And like I said, unless he had a  
7 billion dollars in outside wealth that had nothing  
8 to do with Twitter, he was not well diversified.

9 **Q. You're essentially making the same**  
10 **analysis that Professor Henderson has made here.**

11 **A. No.**

12 **Q. You are examining what's publicly**  
13 **available about Mr. Costolo's portfolio and income**  
14 **and compensation package and coming to a conclusion**  
15 **about what motivated his trading.**

16 **A. Well, if that's what you're talking**  
17 **about, I mean, that we're looking at the public**  
18 **information, yes. So I'm thinking about multiple**  
19 **motivations, consumption, diversification, signaling**  
20 **and liquidity.**

21 Professor Henderson, although he  
22 clearly recognizes diversification as a motivation  
23 and discusses it in detail in his report, when he  
24 then gets to Mr. Costolo and his trading before the  
25 class period, he focuses exclusively on his

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1 consumption issue without considering the other  
2 issues. And I just think that that's not right.

3 Q. When you say you're thinking about  
4 multiple motivations for Mr. Costolo's trades -- and  
5 you identify a few here, but, again, you don't --  
6 you don't know actually what his reasons for trading  
7 were, do you?

8 A. I mean, I know what I saw in his  
9 deposition and what he talked about and what the --  
10 I think Twitter actually even released some public  
11 disclosures about his trading behavior and some of  
12 the reasons behind it, but beyond that, I don't  
13 know.

14 Q. Okay. So when you say in your report  
15 here that his trading pattern "was motivated" by  
16 those factors, is that a correct statement?

17 A. Well, essentially what I'm saying here  
18 is, again, as I've indicated -- I mean, when I do  
19 this analysis, I consider multiple reasons.  
20 Professor Henderson starts out by giving at least  
21 lip service to multiple reasons, but then once it  
22 comes to analyzing Mr. Costolo's trading behavior,  
23 he focuses exclusively on consumption. And that's  
24 my point.

25 Q. I want to stop you there. I

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1 understand that's your criticism of Professor  
2 Henderson.

3 I'm just asking you, do you, in fact,  
4 know what motivated these trades when you say they  
5 were motivated by other economically rational  
6 reasons, or are you speculating?

7 A. When you say "was motivated," are you  
8 talking about paragraph 56?

9 Q. I am.

10 A. In paragraph 56, I'm clearly rebutting  
11 Professor Henderson. So I'm clearly saying that  
12 Professor Henderson has talked about multiple  
13 reasons, and then he focuses on consumption. And  
14 I'm saying you need to focus on some of these other  
15 things as well, because they're still there and they  
16 can still easily be there during the class period  
17 and after the trading.

18 In the final sentence there, I say,  
19 "Diversification...appears to have been a motivating  
20 factor for Mr. Costolo's sales," so --

21 Q. It would be fairer to say that  
22 Mr. Costolo's trading pattern may have been  
23 motivated by other economically rational reasons;  
24 wouldn't you agree?

25 A. My point here --



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1 MR. YOUNGWOOD: Objection to form.

2 THE WITNESS: Yeah, I don't want to be  
3 argumentative, but I'm clearly, in  
4 paragraph 56, focused on Professor Henderson  
5 and what Professor Henderson didn't do that  
6 he should have done. And that's the point  
7 that I'm trying to make, and I think that's  
8 clear in this paragraph.

9 BY MS. CONN:

10 Q. When you say  
11 "Diversification...appears to have been a motivating  
12 factor for Mr. Costolo's sales," are you basing that  
13 on anything other than what Twitter reported to the  
14 press after Mr. Costolo came under scrutiny for  
15 selling his stock?

16 A. Yes.

17 Q. What are you basing that on?

18 A. I'm basing it on what I just talked  
19 about a few minutes ago: The fact that Mr. Costolo  
20 had a relatively low salary; he had substantial  
21 equity in Twitter that had been locked up for many  
22 months, even years prior to the IPO and then even a  
23 period after that; and that he had some \$300-plus  
24 million in equity, he sold a very small percentage  
25 of that, less than 10 percent; and unless he had a

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1 billion dollars in wealth outside of Twitter,  
2 diversification would have been a perfectly  
3 reasonable motivation for those trades.

4 **Q. The same factors that you just**  
5 **identified would also support consumption as a**  
6 **motivation for those trades; would you agree?**

7 A. Well, consumption would be --  
8 consumption would be -- consumption would be a  
9 motivation until you had sold enough stock to  
10 satisfy your consumption needs, and then the  
11 consumption needs may not continue, but  
12 diversification needs and some of these other  
13 reasons may still be there -- would still be there.

14 **Q. I think you told me earlier that in**  
15 **formulating your opinions about what motivated**  
16 **Mr. Costolo's trading prior to the class period, you**  
17 **did not review any documents regarding what**  
18 **knowledge he had about Twitter's business operations**  
19 **at the time; correct?**

20 A. Yes -- you know, yeah, nothing  
21 specific. Certainly not with that intended purpose.

22 **Q. I'd like to show you what's previously**  
23 **been marked as Exhibit 308.**

24 (Exhibit 308, Previously marked.)

25 MS. CONN: For the record, Exhibit 308

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1 is a December 28, 2014, e-mail between Dick  
2 Costolo and Peter Fenton bearing Bates  
3 TWTR\_SHEN\_00248325 through I think 326,  
4 although the Bates number has been cut off on  
5 the second page. I apologize for that.

6 BY MS. CONN:

7 Q. Is this a document that you considered  
8 in formulating your report?

9 A. I mean, I do recall reading some  
10 e-mails from Christmastime or the holiday time. I  
11 can't recall if it's this one specifically.

12 Is this one that I've cited?

13 Q. Yes, it actually is in your list of  
14 materials considered.

15 A. Well, then, maybe this is one I've  
16 seen.

17 Q. Do you know who Peter Fenton is?

18 A. Let me just refresh my memory on this.

19 Q. Sure.

20 (Pause.)

21 A. I can't recall exactly who Peter  
22 Fenton is.

23 Q. Okay. I'll represent to you that  
24 Mr. Fenton is a member of Twitter's board of  
25 directors, or was at the time of this e-mail.

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1 A. Okay.

2 Q. Is this e-mail in which Mr. Costolo  
3 tells one of Twitter's directors that, quote, "it

4 [REDACTED]

5 [REDACTED]

6 expects to have his "feet held to the fire...when we  
7 announce in February."

8 Do you see those statements?

9 A. I don't see the "February" thing.  
10 Where's that?

11 Q. It's the paragraph that starts, "Of  
12 course, it's the user number we all expect to have  
13 our feet held to the fire about when we announce in  
14 February."

15 A. Okay.

16 Q. Is this e-mail in which Mr. Costolo is  
17 making these representations to one of Twitter's  
18 directors relevant to your opinion about his  
19 motivations for trading prior to the class period?

20 A. I mean, I'll note this is in December.  
21 There's a lot of information in here. I don't know  
22 how this fits into the overall information mix. I  
23 mean, there's discussions about disappointing  
24 things, things they're trying to do to make things  
25 better. There's lots of information here. I don't

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1 know how to put this in context.

2 Q. Okay. If you assume that Mr. Costolo  
3 knew of negative trends in user growth and user  
4 engagement at the time of his sales, does that  
5 change your opinion?

6 A. No, there's always, you know,  
7 disappointing things, favorable things. There's  
8 lots of -- there's a big mix of information about  
9 companies all the time. So an e-mail like this  
10 doesn't help me at all.

11 Q. Well, I'm not asking you just about  
12 the e-mail itself. I'm asking you to assume that  
13 Mr. Costolo knew negative trends in user growth and  
14 user engagement.

15 A. I have no way to put that in the  
16 overall context of the organization. So I don't  
17 know how important that is. I don't know if other  
18 things were going on that might have swamped that  
19 bad news on the positive side. I just have no idea.

20 Q. So it doesn't change your opinion.

21 A. Definitely not.

22 Q. If you'll look, please, at  
23 paragraph 57 of your report.

24 (Pause.)

25 A. Okay.

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1 Q. And you write here, towards the end of  
2 the paragraph at the top of the page 32,  
3 Mr. Costolo's "decision not to sell during the class  
4 period appears to have been motivated at least in  
5 part by other factors."

6 Do you see where I'm reading from?

7 A. Let me just read this paragraph.

8 Q. Sure.

9 (Pause.)

10 A. Okay.

11 Q. Do you see that statement that I just  
12 read?

13 A. Yes.

14 Q. Now, again, Mr. Costolo had canceled  
15 his Rule 10b5-1 plan; correct?

16 A. A few days into the class period, yes.

17 Q. And, therefore, he could not sell  
18 under Twitter's insider trading policy during the  
19 class period; is that correct?

20 A. Not unless he had put in another plan,  
21 but we've talked about that.

22 Q. So when you refer here to his  
23 "decision not to sell," what are you referring to?

24 A. It means that he canceled his plan  
25 during -- he set up a plan in August and then,

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1 during the class period, he canceled the plan.  
2 Professor Henderson -- well, here I'm saying  
3 Professor Henderson has argued that he didn't need  
4 to trade during the class period, I guess because he  
5 didn't have consumption needs. And my point here is  
6 simply that there may have been other factors beyond  
7 consumption needs for why Mr. Costolo didn't sell.

8 Q. So the answer to my question, what are  
9 you referring to when you talk about his decision  
10 not to sell, is that you're talking about his  
11 decision to cancel his plan?

12 A. During the class period, yes.

13 Q. Okay. As with the other sales that  
14 we've discussed today or trading that we've  
15 discussed today, you're not able to say what, in  
16 fact, was in Mr. Costolo's head at the time he  
17 canceled his plan; is that true?

18 A. True. Correct.

19 Q. And even if you could, Mr. Costolo  
20 will be present at trial; right?

21 MR. YOUNGWOOD: Objection to form.

22 THE WITNESS: I have no idea.

23 BY MS. CONN:

24 Q. You would expect that if he is present  
25 in the courtroom, he'll testify; correct?

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1 MR. YOUNGWOOD: Objection to form.

2 THE WITNESS: I don't know the answer  
3 to that.

4 BY MS. CONN:

5 Q. Can you think of any reason why the  
6 jury would need to hear from you what was in  
7 Mr. Costolo's head?

8 MR. YOUNGWOOD: Objection to form.

9 THE WITNESS: I'm not sure what you're  
10 asking. I mean, I don't know what the jury  
11 needs to hear.

12 BY MS. CONN:

13 Q. Okay. Well -- I mean, my point here  
14 is, in paragraph 57, you've made some -- you've  
15 speculated a bit about what could have motivated  
16 Mr. Costolo's cancellation of his 10b5-1 plan;  
17 correct?

18 A. I haven't speculated. Based on the  
19 information that I've seen regarding discussions  
20 about canceling these plans and the pressures from  
21 the investment community and all the other things  
22 we've talked about, I've laid out some possibilities  
23 that would be reasonable possibilities that are not  
24 consistent with the plaintiffs' allegations for why  
25 we might have seen this trading behavior.



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1 Q. "Reasonable possibilities" meaning  
2 they may or may not be true.

3 A. I don't know with certainty why  
4 they -- why they did what they did at any point in  
5 time.

6 Q. Okay. And -- withdraw that.  
7 I'm trying to find where it starts.

8 You go on to discuss in your report  
9 Professor Henderson's analysis of Mr. Costolo's  
10 trades relative to other CEOs. I believe that  
11 starts at paragraph 58 and continues on for several  
12 paragraphs.

13 A. Okay. Yes.

14 Q. And then, in paragraph 67, you offer  
15 what you describe as "a more relevant analysis."

16 Do you see that?

17 A. Yes.

18 Q. To conduct that analysis, you selected  
19 a group of companies and compared the trading  
20 behavior of their CEOs with Mr. Costolo's trading  
21 behavior; correct?

22 A. I did, yes.

23 Q. And that was also the methodology  
24 employed by Professor Henderson, wasn't it?

25 A. No.

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1 MR. YOUNGWOOD: Objection to form.

2 BY MS. CONN:

3 Q. Oh. In what way was it different?

4 A. We used a very, very different method  
5 for selecting and filtering to find the comparable  
6 CEOs. And Professor Henderson didn't even -- I  
7 don't even know what method he followed because the  
8 method he described in the report would not have  
9 given rise to his -- to his sample group, so --

10 Q. Okay.

11 A. -- I have no idea what Professor  
12 Henderson did.

13 Q. Well, what you're arguing with in your  
14 report is the particular selection Professor  
15 Henderson made; isn't that right?

16 A. It's all about the particular  
17 selection. I mean, that's the whole point of  
18 picking a peer group.

19 Q. Okay. So taking it back a step from  
20 what the peer group was, you'd agree that both you  
21 and Professor Henderson chose a peer group and then  
22 analyzed Mr. Costolo's trading behavior relative to  
23 the peer group that you selected?

24 A. Yes. And I wouldn't call Professor  
25 Henderson's analysis peers. He picked some firms to

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1 compare Mr. Costolo to, but I wouldn't call them  
2 peers.

3 Q. Okay. But setting aside that semantic  
4 point --

5 A. It's not semantic.

6 Q. -- it's still a group of companies by  
7 which he made a comparison; correct?

8 MR. YOUNGWOOD: Objection to form.

9 THE WITNESS: It is not semantic.

10 BY MS. CONN:

11 Q. Okay. I'm not trying to argue with  
12 you, sir.

13 A. Okay.

14 Q. But I asked you if Professor Henderson  
15 chose a peer group and analyzed Mr. Costolo's  
16 trading behavior relative to that peer group and  
17 that you did the same thing.

18 Your answer was "I wouldn't call them  
19 peers." I'm just trying to get an answer to my  
20 question.

21 A. Okay. I wouldn't call them peers.

22 Q. So how about an answer to -- a  
23 yes-or-no answer to this question: Professor  
24 Henderson chose a group of companies and compared  
25 the trading behavior of their CEOs to Mr. Costolo's,

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1 and you also chose a group of companies and compared  
2 their trading -- the trading behavior of their CEOs  
3 to Mr. Costolo's; is that fair to say?

4 A. That's fair, yes.

5 Q. Okay. You also made some subjective  
6 decisions about whether companies that matched your  
7 criteria should be included in your analysis; isn't  
8 that right?

9 A. Can you point me to what you're  
10 referring to?

11 Q. Yes. It's Footnote 126 on page 38.

12 (Pause.)

13 Q. In Footnote 126, you seem to be  
14 acknowledging that you excluded a company that fit  
15 your prespecified parameters since the CEO resigned  
16 one month after the company's IPO and may have had  
17 unconventional trading patterns.

18 Do you see that?

19 A. Right.

20 Q. So even though you had a defined set  
21 of criteria, you also made a decision that certain  
22 companies within those criteria should not be  
23 included in your sample.

24 A. I did. And I clearly discuss those in  
25 and footnoted those in my report, where Professor

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1 Henderson did not.

2 Q. Okay. Did you -- you told me you had  
3 not read his deposition; right?

4 A. I have not.

5 Q. So you selected companies based on --  
6 one of the factors you considered was whether they  
7 had an IPO close in time to Twitter's IPO; is that  
8 right?

9 A. Yes.

10 Q. Why would the random chance that these  
11 companies IPO'd at the same time as Twitter make  
12 them peers of Twitter?

13 MR. YOUNGWOOD: Objection to form.

14 THE WITNESS: What do you mean by  
15 "random"?

16 BY MS. CONN:

17 Q. Meaning that they just so happened to  
18 IPO in a particular time frame.

19 A. Well, that certainly is not the first  
20 criteria. The first criteria was to select firms in  
21 the same industry code as Twitter. So among a set  
22 of firms that are deemed by the government,  
23 actually, to be in the same industry as Twitter,  
24 then I -- once I have that group, then I look for  
25 the similar kinds of tech companies that went public

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1 in a window around Twitter's.

2 Q. How many of the companies that you  
3 selected are social media companies?

4 A. I -- I don't know precisely. I mean,  
5 they're based on the Standard Industrial  
6 Classification code that is in the same industry  
7 code as Twitter.

8 Q. How many of the companies you selected  
9 are actually considered by Twitter to be its peers?

10 MR. YOUNGWOOD: Objection to form.

11 THE WITNESS: Well -- yeah, you know,  
12 this isn't -- I'm not selecting a peer group  
13 based on what kind of products compete with  
14 each other or social media products that  
15 compete with each other. I'm selecting a  
16 group of peers that I believe would be  
17 appropriate for looking at the trading  
18 behavior of the CEO.

19 BY MS. CONN:

20 Q. And to use your words in paragraph 67,  
21 you believe that your selection of comparator  
22 companies is more "reasonable" --

23 A. Yes.

24 Q. -- than Professor Henderson's; is that  
25 true?

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1           A.       Yes, Professor Henderson used, I would  
2       call, an ad hoc approach that doesn't even follow  
3       what he disclosed in his report. And I'm using an  
4       approach that's much more scientific and more  
5       consistent with what a researcher -- an empirical  
6       researcher would do in my field, accounting and  
7       finance.

8           Q.       Would you agree that there is some  
9       degree of arbitrariness in your selection criteria?

10                   MR. YOUNGWOOD: Objection to form.

11                   THE WITNESS: No, I don't think  
12       there's any arbitrariness at all.

13       BY MS. CONN:

14           Q.       Fair to say that you disagree with the  
15       selection of companies that Professor Henderson  
16       made?

17           A.       I disagree with his approach. So the  
18       companies fall out of the approach. So when the  
19       approach is flawed, then the comparator group will  
20       be flawed.

21           Q.       And when you say "approach," do you  
22       mean his -- his criteria?

23           A.       Well, I mean everything. So I mean  
24       the going and finding a list of tech companies from  
25       a random magazine or website or what have you, then

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1 putting in some criteria that ignores whether --  
2 whether he's looking at trading behavior following  
3 an IPO. And then, in a very ad hoc way, including  
4 and excluding certain CEOs inexplicably in his  
5 analysis based on his own criteria.

6 Q. Do you know Professor Henderson, by  
7 the way?

8 A. Not personally.

9 Q. Let's turn to paragraph 71 in your  
10 report, Exhibit Henderson 2.

11 A. Okay.

12 Q. In this and the following two  
13 paragraphs, you criticize Professor Henderson --  
14 withdraw that.

15 In this and the following two  
16 paragraphs, you criticize Professor Henderson's  
17 characterization of stock sales by Twitter insiders.

18 Is that a fair summary?

19 A. Yes, I'm -- yes, I'm critiquing his --  
20 yeah, his analysis of the full group of Twitter  
21 executives and their trades over a relatively long  
22 time frame.

23 Q. And I think that we established  
24 earlier in the deposition that this is the aggregate  
25 trading by Twitter insiders during the class period;



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1 is that right -- or during that period that he  
2 analyzed?

3 A. That's my understanding, yes.

4 Q. Do you disagree that -- withdraw that.  
5 I don't want to ask a double negative.

6 Do you agree that Twitter insiders  
7 sold more stock in the period from Analyst Day to  
8 the end of the class period than in the other  
9 periods Professor Henderson analyzed?

10 MR. YOUNGWOOD: Objection to form.

11 THE WITNESS: Well, I mean -- you  
12 know, I'm not sure exactly what you're asking  
13 there. I mean, Professor Henderson looks at  
14 it on a monthly basis. So, you know, I think  
15 if -- simply answering your question, I think  
16 there would have been more sales sold in the  
17 later period than between Analyst Day and the  
18 class period. So I think that's -- I don't  
19 think that's the question you want the answer  
20 to.

21 BY MS. CONN:

22 Q. Okay. I'm looking at paragraph 71.

23 A. Okay.

24 Q. And I understand, sir, that you have  
25 some disputes with Professor Henderson's

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1 characterization here, but do you disagree with his  
2 conclusions that Twitter insiders over -- I'm sorry.

3 Take a look at paragraph 71, second  
4 line from the bottom of page 41.

5 A. Okay.

6 Q. You quote Professor Henderson as  
7 saying Twitter insiders "sold 1.2 million shares per  
8 month and \$50 million per month, or about 1.8 times  
9 and 2.4 times the average share and dollar amount,  
10 respectively," from -- as compared to 2014 through  
11 2019.

12 A. Okay.

13 Q. Do you disagree with his numbers here?

14 A. No. So I didn't -- I didn't  
15 independently verify the number -- all the trades  
16 during this long time period, but my understanding  
17 is, based on the website that he used to come up  
18 with these numbers, those are the numbers that get  
19 spit out.

20 Q. And do you disagree -- going up a  
21 couple lines in that same paragraph, do you disagree  
22 with the conclusion that "two of the top three  
23 biggest months of sales by dollar volume (and four  
24 of the top ten biggest months in terms of stock  
25 volume) over a 61-month period" occurred in that

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1 Analyst-Day-to-class-period time frame?

2 A. Yeah, I don't dispute with the  
3 numbers. I dispute the relevance of his -- of his  
4 analysis of those numbers.

5 Q. Okay. You say here, at the top of  
6 page 42, "Professor Henderson relies solely on a  
7 mechanical analysis of stock sales data to make this  
8 claim, [and] ignores relevant economic  
9 circumstances, ignores documentation that discusses  
10 the motivations behind the timing of 'other Twitter  
11 insiders' stock sales, and fails to recognize  
12 particular circumstances that explain the sales."

13 I won't read the rest of the sentence.

14 What "economic circumstances" are you  
15 referring to here?

16 A. So we've been discussing a lot of  
17 those today. So keep in mind that his trades here  
18 in this analysis include Mr. Costolo, they include  
19 the founders, they include Mr. Noto and the other  
20 executives that we have been talking about.

21 So those executives have a lot of the  
22 shares, so their shares are going to be, in all  
23 likelihood -- their trading behavior is going to be  
24 heavily influencing this. So in some sense, this  
25 analysis Professor Henderson is doing is just going

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1 to kind of be mirroring what we've been talking  
2 about all along.

3 So the economic circumstances are that  
4 there was an IPO, there was a lockup period, you had  
5 founders and the CEO that had committed to not  
6 selling shares -- publicly committed to not selling  
7 shares for some number of months.

8 And so then in and around Analyst Day  
9 through the class period, you would expect to see a  
10 lot more trading in that time period for all the  
11 reasons we've discussed than you would in 2018,  
12 which is several years after the IPO.

13 So Professor Henderson, by simply  
14 looking at what the trading behavior looks like in  
15 2017 and '18 and '19 and saying it's different than  
16 the trading behavior that happened right after  
17 the -- right after the IPO, that's not surprising.  
18 We've talked a lot about why you would expect to see  
19 more trading coming after the IPO and the lockup  
20 period. So it's the same set of arguments that  
21 we've been talking about today.

22 **Q. Is there a different time period that**  
23 **you think would be appropriate for such an analysis?**

24 **A.** Well, the analysis -- I mean, to  
25 compare -- well, couple of things.

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1 To compare the trading behavior  
2 following an IPO and following a lockup period to a  
3 random time period, I don't see how that's useful.

4 The analysis we were talking about a  
5 few minutes ago where you compare the trading  
6 behavior following an IPO and a lockup period to  
7 other executives that are also experiencing an IPO  
8 and a lockup period, that's more of an  
9 apples-to-apples comparison.

10 So anything -- any kind of analysis  
11 that strips out the expected trading behavior around  
12 an IPO and sort of takes that out of the equation is  
13 not going to be very useful here.

14 Q. So when you say, also in this  
15 sentence, that Professor Henderson "fails to  
16 recognize particular circumstances that explain the  
17 sales during the period of Analyst Day [to the]  
18 class period," is that something different? Are you  
19 referring to something different there or what we've  
20 just discussed?

21 A. No, mainly the same thing, so the IPO,  
22 the lockup period, all the other things we've been  
23 talking about.

24 Q. You also say that Professor Henderson  
25 ignored relevant documentation.

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1 Did you review documents regarding  
2 whether the trading individuals had material  
3 non-public information at the time of their sales?

4 A. No. I mean, again, keep in mind,  
5 these Twitter insiders are including Mr. Costolo,  
6 Mr. Dorsey, Mr. Williams. So they're including all  
7 the same executives we've been talking about.

8 So I guess my answer is the same as  
9 the earlier answer. I haven't studied what material  
10 non-public information they might have had.

11 Q. Okay. In paragraph 74, you discuss  
12 the cancellation of the 10b5-1 plans, and you state  
13 that, quote, "There are multiple reasons why a  
14 corporate executive" might cancel a trading plan,  
15 and then you list four possibilities.

16 Do you see that?

17 A. I do, yes.

18 Q. Did you see any evidence that any of  
19 these reasons was present at Twitter -- withdraw  
20 that. Let me ask it a little bit better.

21 Did you see any evidence that any of  
22 the four possible reasons for canceling a plan was,  
23 in fact, in play at Twitter during the class period?

24 A. Not specifically, no.

25 MS. CONN: Can we go off the record

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1 for a minute.

2 THE VIDEOGRAPHER: The time right now  
3 is 12:12 p.m. We are off the record.

4 (Luncheon recess from the record.)  
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1 A F T E R N O O N S E S S I O N

2 THE VIDEOGRAPHER: This marks the  
3 beginning of Media No. 3. The time right now  
4 is 12:55 p.m. We're back on the record.

5 WAYNE R. GUAY,

6 having been previously sworn, resumed the  
7 stand and testified further as follows:

8 EXAMINATION (Cont'd.)

9 BY MS. CONN:

10 Q. Welcome back, Professor Guay. You  
11 understand that you're still under oath after our  
12 lunch break?

13 A. Yes.

14 Q. If I could redirect you back to  
15 paragraph 71 of your report, which is Henderson  
16 Exhibit 2.

17 A. Okay.

18 Q. I want to ask you about your statement  
19 here at the top of page 42 that Professor Henderson  
20 "ignores documentation that discusses the  
21 motivations behind the timing of 'other...insiders'  
22 stock sales."

23 Do you see that?

24 A. I do.

25 Q. And your footnote here references two



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1 documents; is that true?

2 A. Let's see.

3 (Pause.)

4 A. Yeah.

5 Q. Are those the only documents that you  
6 saw that discussed the motivations behind other  
7 Twitter insiders' stock sales?

8 A. No, those are just a couple of  
9 examples.

10 Q. As you sit here today, can you think  
11 of other documents that reference or discuss the  
12 motivations of other Twitter insiders' stock sales?

13 A. Well, I mean, yeah, we talked about  
14 some of the -- I think we talked about -- maybe we  
15 haven't, but, yeah, I reference some documents in  
16 here that discusses communications between  
17 executives regarding cancellation of their 10b5-1  
18 plans. There may be some other documents that talk  
19 about putting the 10b5-1 plans in place prior to the  
20 class period.

21 Q. Are all of those documents that you  
22 have in mind right now in your list of materials  
23 considered?

24 A. Certainly the ones that I have in mind  
25 would be ones that I've seen, yes.

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1 Q. You'd agree that the documents in your  
2 list of materials considered are not the complete  
3 universe of documents in this litigation; correct?

4 A. I understand that, yes.

5 Q. And the documents you reviewed -- or  
6 the documents listed on your materials considered  
7 list, were those provided to you by counsel?

8 A. Some were. We talked about that  
9 earlier. The Bates stamped ones would be.

10 Q. Okay.

11 A. Some of the other ones.

12 Q. Sure.

13 And the Bates stamped documents on  
14 that list of materials considered, those were  
15 selected for your review by counsel; correct?

16 A. Selected for my review by counsel?  
17 Some of them may have been documents -- some of them  
18 may be documents where I requested documents on  
19 certain topics. Some of them may have been ones  
20 that they selected because they thought it would be  
21 relevant to my analysis.

22 Q. Let's turn back to paragraph -- I  
23 think we were at paragraph 75 of your report.

24 A. Okay.

25 Q. Here in paragraph 75 of your report,

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1 Henderson Exhibit 2, you disagree with Professor  
2 Henderson's statement that the cancellations of  
3 Rule 10b5-1 plans by certain Twitter insiders were  
4 "suspicious"; is that correct?

5 A. That are "inherently 'suspicious'."

6 Q. Okay. Is it your opinion that the  
7 cancellation of a Rule 10b5-1 plan is never  
8 consistent with an intent to defraud?

9 A. I mean, again, you can probably  
10 construct hypotheticals where that -- where it could  
11 be.

12 Q. So you would agree that there are  
13 circumstances under which the cancellation of a  
14 Rule 10b5-1 plan is consistent with an intent to  
15 defraud?

16 A. Well, the cancellation per se -- I  
17 mean, I don't know if the cancellation per se would  
18 be consistent with an intent to defraud because I'm  
19 not sure the cancellation per se would harm  
20 investors in any way.

21 So maybe I'm not quite sure what your  
22 question is, I guess.

23 Q. Right.

24 I'm just -- and I think we discussed  
25 earlier -- you know, we were talking about

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1 Rule 10b5-1 plan cancellations and what the -- what  
2 you had meant earlier in your report when you talked  
3 about them "by itself" is not a violation of  
4 Rule 10b-5 -- or 10b5-1, excuse me. I think you  
5 told me you meant by "by itself" without any other  
6 contextual information; is that correct?

7 A. Yes, in gen- -- yes. In general, that  
8 would be what I mean, yes.

9 Q. And so that's sort of the distinction  
10 you're making right now, correct, that the 10b5-1  
11 cancellation, without any other contextual  
12 information, may or may not be consistent with an  
13 intent to defraud?

14 A. Yes, inherently -- it's not inherently  
15 suspicious. So without any other context, canceling  
16 a plan, in my mind, is not suspicious.

17 Q. But if you had other context, aside  
18 from just the cancellation itself, that other  
19 contextual information may support an inference --  
20 or it may support an intent to defraud; correct?

21 A. Well, I haven't seen any evidence of  
22 that in this case, but could you construct a  
23 hypothetical? I mean, anything's possible, I  
24 suppose.

25 Q. For example, would you want to know

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1     **what the executive knew about the company's business**  
2     **when he entered into his plan?**

3             A.       So a minute ago, you're talking about  
4     cancellations. Now you're talking about entering  
5     into the plan?

6             Q.       Uh-huh.

7             A.       So certainly the 10b5-1 plans -- the  
8     SEC requirements are they have to enter into those  
9     plans when they're not in possession of material  
10    non-public information. So that's one of the  
11    requirements of the 10b5-1 plan.

12            Q.       Would you want to know that  
13    **executive's prior trading history?**

14            A.       Would I want to know for what purpose?

15            Q.       **For purposes of formulating an opinion**  
16    **about whether the cancellation was consistent with**  
17    **an intent to defraud.**

18            A.       I mean, again, I haven't been asked to  
19    determine whether the cancellation was consistent  
20    with an intent to defraud. We talked about what  
21    I've done. So I guess you're now talking about --  
22    I'm not sure what you're talking about.

23            Q.       **To go back, the original question was,**  
24    **are there circumstances under which the cancellation**  
25    **of a 10b5-1 plan could be consistent with the intent**

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1 to defraud?

2 And I think your answer was, without  
3 any other contextual information --

4 A. Right.

5 Q. -- no.

6 So now I'm trying to --

7 A. I see.

8 Q. -- ascertain, what contextual  
9 information would you want.

10 A. I haven't given that a thought.

11 Q. Okay. As you sit here today, can you  
12 say whether the executive's prior trading history  
13 might be relevant to that analysis?

14 A. To the analysis of whether the  
15 cancellation of a 10b5-1 plan was consistent with an  
16 intent to defraud? I mean, again, I don't have any  
17 real context to put that in.

18 Q. How about what the executive knew when  
19 he canceled his plan?

20 A. I mean, if one was -- you know, if --  
21 I mean, again, I would need to -- I would need to  
22 have more context.

23 Q. Same answer with respect to what  
24 information was in the public domain at the time, at  
25 the time of the cancellation, to be clear?

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1           A.           I mean -- yeah, I mean -- yeah,  
2           again -- yeah, if you want to study something,  
3           getting some information about it would be probably  
4           a reasonable thing to do, but I'm not aware that  
5           Professor Henderson has provided any of that  
6           information.

7           **Q.           And would you also consider what the**  
8           **stock price was doing at the time of the**  
9           **cancellation for that analysis?**

10          A.           What it was doing?

11          **Q.           Uh-huh.**

12          A.           What does that mean?

13          **Q.           Was it up, was it down, flat?**

14          A.           Relative to what?

15          **Q.           To prior prices.**

16          A.           I can't see how that would be  
17          relevant, but, I mean, maybe you could construct a  
18          story where it would be relevant.

19          **Q.           If the executive is in possession of**  
20          **material non-public information at the time he**  
21          **cancels his Rule 25 -- I'm sorry -- Rule 10b5-1**  
22          **plan, is that relevant to whether the cancellation**  
23          **is suspicious?**

24          A.           Say that again.

25          **Q.           Fair enough. I kind of garbled that**

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1 question.

2 If the executive is in possession of  
3 material non-public information at the time he  
4 cancels his plan, is that relevant to whether the  
5 cancellation is suspicious?

6 A. Again, it would depend on the context.

7 Q. When you say "it would depend on the  
8 context," what other information would you want to  
9 know?

10 A. Well, I mean, none of this relates to  
11 the stuff that I've been asked to do in this case  
12 really, so I'm just trying to understand what --  
13 you're asking me to think about what analysis I  
14 would do in a very generic hypothetical setting.

15 So, I mean, I'm trying to be helpful,  
16 but without more context -- if you want to ask me  
17 something specific to what I did or something  
18 specific to this case, I might be able to give you a  
19 better answer.

20 Q. Well, in this case, you disagree that  
21 the cancellation of the 10b5-1 plans by Mr. Costolo  
22 and other executives was inherently suspicious;  
23 correct?

24 A. Correct.

25 Q. And in formulating that opinion, did



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1 you consider what those executives knew at the time  
2 they entered into their plans?

3 A. To some extent, yes.

4 Q. Did you see any evidence that they --  
5 withdraw that.

6 Did you consider what information  
7 those executives knew when they canceled their  
8 plans?

9 A. To some extent, yes.

10 Q. When you say "to some extent," what  
11 are you referring to?

12 A. Well, I mean, as I talk about in my  
13 report, my understanding of the discussions among  
14 the executives around the time of the cancellation  
15 of the plans is that they were sensitive to the fact  
16 that outside investors were looking at their trades  
17 and might be misperceiving what those trades meant.

18 And so -- which is a perfectly  
19 reasonable thing to do. And being cognizant of  
20 that, they decided to cancel their plans so that  
21 they didn't send the wrong signal to the market.

22 Q. I think my question's a little bit  
23 different.

24 A. Okay.

25 Q. Did you consider whether they had

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1 material non-public information about Twitter's  
2 business at the time they canceled their plans?

3 A. Okay. That wasn't the question,  
4 though, but this is a new question.

5 Q. That is the new question.

6 A. Okay. Did I -- no, I didn't consider  
7 that.

8 Q. Did you consider --

9 A. Well, I didn't analyze that.

10 Q. What's the difference? What's the  
11 distinction in your mind?

12 A. Well, considering it would seem to  
13 imply that I know it does or doesn't exist and that  
14 I chose to ignore it.

15 Q. Okay.

16 A. I simply don't know if it existed.

17 Q. You don't know one way or the other?

18 A. No. Again, I've analyzed the  
19 situation both under the assumption the plaintiffs'  
20 allegations are correct that they had material  
21 non-public information and in a scenario where their  
22 allegations are not correct.

23 Q. And did you -- did you analyze whether  
24 the -- withdraw that.

25 Did you analyze what information was

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1 in the public domain at the time the executives  
2 canceled their plans?

3 A. To some extent, yes.

4 Q. And is that -- are you referring to  
5 the same information that was in your prior answer,  
6 the sensitivity to the public scrutiny?

7 A. Yes, the -- the sensitivity that the  
8 sales may be sending the wrong signal to the market.

9 Q. You said you didn't analyze whether  
10 Mr. Costolo was in possession of material non-public  
11 information at the time of the cancellation; is that  
12 correct?

13 A. No -- I did not do that.

14 Q. Okay. I'd like to show you what's  
15 previously been marked as Exhibit 299.

16 (Exhibit 299, Previously marked.)

17 BY MS. CONN:

18 Q. Is this -- well, I'll represent to you  
19 this is one of the documents in the list of  
20 materials you considered, sir.

21 MS. CONN: And for the record,  
22 Exhibit 299 is a -- an October 16, 2014,  
23 e-mail from Dick Costolo to the Twitter  
24 board, bearing Bates TWTR\_SHEN\_00249151  
25 through 52.

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1 BY MS. CONN:

2 Q. Do you recall reviewing this document  
3 in the course of preparing your report?

4 (Pause.)

5 A. Vaguely, I guess, but not -- not  
6 specifically. It doesn't -- I don't think it has  
7 much to do with the trading behavior that I  
8 analyzed.

9 Q. Would you take a look, please, at the  
10 third paragraph down in the e-mail.

11 A. Okay.

12 Q. Where Mr. Costolo tells the board,  
13 Twitter's board of directors, "We simply won't be  
14 able to grow the business at the pace we'd like if  
15 we don't start adding more healthy users to the  
16 platform who use us on a more regular basis."

17 Do you see that?

18 A. I do.

19 Q. That e-mail to the board was not  
20 relevant to your analysis of Mr. Costolo's trading  
21 behavior; is that your testimony?

22 A. I'll note that -- this e-mail is  
23 outside of the class period, so it's several months  
24 prior to the class period. But I'm not sure why it  
25 would be relevant. I mean, as we've talked about, I

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1 don't know what any of these things -- I don't know  
2 the context of any of these things. I don't know if  
3 this is -- if these are good things or bad things.  
4 I don't know how many of these things were still  
5 outstanding issues at the time of the start of the  
6 class period relative to October. So I have no way  
7 of assessing how this might have affected his  
8 trading behavior.

9 Q. Did you ask for documents related to  
10 what Mr. Costolo knew about Twitter's business near  
11 the time of the cancellation in February 2015?

12 A. What he knew about the business?

13 Q. Uh-huh.

14 A. No, I'm not sure how that would have  
15 been relevant.

16 Q. Did you ask for documents reflecting  
17 any material non-public information Mr. Costolo had  
18 at the time of his cancellation?

19 A. I wouldn't even know how to formulate  
20 that request. Presumably that's one of the key  
21 issues for the jury to decide.

22 Q. Do you know how this document came to  
23 be in your stack of documents you considered?

24 A. Not -- no, not -- not directly, no.

25 Q. You don't know one way or another

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1     **whether it's one that counsel selected for you?**

2             A.       I'm not sure.

3             MR. YOUNGWOOD:   Objection to form.

4             THE WITNESS:   I'm not sure whether it  
5             was related to a request that I put in for  
6             certain types of documents or whether it was  
7             related to something they thought might be  
8             relevant.   I just don't recall.

9     BY MS. CONN:

10            Q.       Okay.   And if, in fact, plaintiffs'  
11            allegation that Mr. Costolo had -- was in possession  
12            of material non-public information at the time of  
13            his -- at the time he canceled his 10b5-1 plan is  
14            proven true, would you still maintain that the  
15            cancellation was not suspicious?

16            MR. YOUNGWOOD:   Objection to form.

17            THE WITNESS:   I mean, you know, the  
18            key point -- my -- I'm responding to  
19            Professor Henderson's report, and I'm saying  
20            it's not inherently suspicious based on the  
21            evidence that Professor Henderson's provided,  
22            which is none.

23            And so we've talked about it.   I  
24            analyzed Mr. Costolo's trading behavior  
25            during the class period, Mr. Noto's trading

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1 behavior during the class period. And I make  
2 some pretty straightforward statements about  
3 the profitability -- or the financial gains  
4 or losses of those trades under a scenario  
5 where the plaintiffs' allegations are true.  
6 So there's certainly nothing in my opinion  
7 that would change.

8 BY MS. CONN:

9 Q. So just so I'm clear, are you offering  
10 the opinion that the cancellations were not  
11 suspicious, or you're simply saying that Professor  
12 Henderson has not shown that they were suspicious?

13 A. Well, I'm offering the -- maybe three  
14 things; one, that they're not inherently suspicious  
15 without any additional information; two, that  
16 Professor Henderson doesn't provide any evidence  
17 that I've seen that they're suspicious; and, three,  
18 after looking at some of the facts of the case and  
19 some of the issues surrounding what I saw in terms  
20 of discussions among the executives for why they  
21 canceled the plans, those reasons seemed perfectly  
22 reasonable to me. And, in fact, they seem perfectly  
23 reasonable to Professor Henderson as well, and he  
24 says as much in his report.

25 Q. Did you -- in reaching your opinion

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1 that the coordinated cancellation of the Rule 10b5-1  
2 plans by Twitter's chairman, CEO, general counsel,  
3 and VP of sales in February 2015 was not inherently  
4 suspicious, were you asked to assume that the  
5 defendants were canceling their plans in response to  
6 negative media scrutiny?

7 A. You need to break that one down.

8 Q. Sure.

9 A. I don't remember using the word  
10 "coordinated," would be one thing, but...

11 Q. No, that's my word.

12 A. Okay.

13 Q. So -- but I think you've offered the  
14 opinion that the cancellation of the 10b5-1 plans by  
15 a number of executives that we've named -- or that  
16 Professor Henderson has named in his report and that  
17 we've discussed today -- I think you've offered the  
18 opinion that those cancellations were not inherently  
19 suspicious; true?

20 A. They're not inherently suspicious,  
21 yes. Simply canceling a plan doesn't mean there's  
22 anything suspicious.

23 Q. And in reaching your conclusion or  
24 opinion that those cancellations were not inherently  
25 suspicious, were you asked to assume that the



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1     **cancellations were in response to negative media**  
2     **scrutiny?**

3             A.       No, I don't even need to really know  
4     anything about the Twitter case to make that -- to  
5     say that canceling a 10b5-1 plan is not inherently  
6     suspicious is simply a general statement that if we  
7     see a cancellation without any other context, we  
8     can't simply assume it's suspicious.

9             So Professor Henderson seems to think  
10    he can draw that inference without any facts. I  
11    don't agree with that. And then when I look at some  
12    of the facts surrounding what the executives were  
13    talking about at the time they canceled their plans,  
14    Professor Henderson and I both agree that their  
15    story is a reasonable one.

16            **Q.       But did you assume one way or the**  
17    **other that the cancellations were, in fact,**  
18    **motivated by negative media scrutiny?**

19            A.       Well, no. The explanation as I  
20    understand it -- or at least the e-mails I've seen  
21    for the executives discussing the cancellation of  
22    the plans were surrounding concerns about the media  
23    scrutiny. And knowing what I know about executive  
24    trading, knowing what I know about the public signal  
25    it sends to investors, both I and Professor

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1 Henderson opine that it's a reasonable explanation  
2 for that behavior.

3 Professor Henderson goes on to say he  
4 thinks it could be something else, but we both agree  
5 that their -- what we've seen is a reasonable  
6 explanation.

7 Q. And setting aside whether or not it's  
8 a reasonable explanation, you're not saying --  
9 you're not offering the opinion that that was, in  
10 fact, the motivation for the cancellation.

11 A. No, it's consistent with, but I'm  
12 not -- again, we've talked about the state of mind.  
13 I don't know what their state of mind was.

14 Q. Okay. I'd like to show you what we'll  
15 mark as Guay Exhibit 2.

16 (Guay Exhibit 2, Journal of Financial  
17 Economics Article, marked for  
18 identification.)

19 MS. CONN: Which for the record is a  
20 Journal of Financial Economics article  
21 entitled, "The Power of the Pen and Executive  
22 Compensation."

23 BY MS. CONN:

24 Q. You're familiar with this document,  
25 Professor?

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1 A. Yes, I am.

2 Q. You are one of the coauthors of this  
3 article; is that true?

4 A. I am.

5 Q. And in this article, you've opined  
6 that negative media attention does not -- based on  
7 your own empirical research, negative media  
8 attention does not result in a change in executive  
9 compensation; is that correct?

10 A. Yeah, I wouldn't -- we don't typically  
11 say -- refer to it as "opined," but I think we've  
12 done some empirical work. And can you point me to  
13 the specific thing that you're reading.

14 Q. Sure. It's on page 2 of the article.

15 A. Okay.

16 Q. There's a paragraph about halfway down  
17 the page --

18 A. Okay.

19 Q. -- that states, "We find little  
20 support for the hypothesis that the press serves as  
21 a catalyst or change agent for CEO compensation  
22 practices. Specifically" --

23 A. Right, I see that.

24 Q. It goes on to say, "Thus, our results  
25 do not corroborate recent evidence that the media

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1     exerts an important influence on corporate  
2     governance choices."

3             A.       Uh-huh.

4             Q.       Is that still a statement you agree  
5     with today?

6             A.       Certainly, based on the evidence we  
7     had when we wrote this paper. I mean -- yeah.

8             Q.       But you believe that the media did  
9     exert an influence over Twitter's compensation  
10    practices?

11            A.       Well, so just to break it down a  
12    little bit, I mean, I wasn't analyzing Twitter's  
13    compensation practices. So what this paper does  
14    is -- let me just -- I'll briefly explain what it  
15    does.

16                    The idea was that -- the point of the  
17    paper is that CEO compensation, and in particular  
18    sort of media coverage of excessive CEO  
19    compensation, had become very popular at the time --  
20    it's still quite popular. So there have been  
21    arguments that people have made that one of the  
22    things that can keep CEO compensation in check is  
23    when the media gets after executives for excessive  
24    pay.

25                    So what we study in this paper is if a

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1 CEO attracts more attention from the media with  
2 respect to their compensation, do you see the board  
3 and the CEO change their behavior with respect to  
4 the level of compensation. And we don't find much  
5 evidence of that.

6 And the reason we put forward and the  
7 one that I actually believe is that because -- I  
8 think that the board and the CEO typically believe  
9 that they're contracting appropriately over the  
10 compensation. So just because the media is after  
11 them doesn't mean that they necessarily need to make  
12 some change.

13 And if you want to draw an analogy to  
14 the Twitter situation there, I mean, these  
15 executives -- as I saw it, there was some debate  
16 over should the media be interpreting our sales in  
17 such a way, they shouldn't, but they do, and so then  
18 what are we going to do? Should we cancel the plans  
19 or not? And that was the debate that I saw in those  
20 e-mails.

21 So this paper doesn't speak directly  
22 to the issues in the Twitter case, but there are  
23 some analogies that can be made.

24 **Q. Is the avoidance as you were just**  
25 **describing, the avoidance of negative public**

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1     **scrutiny, in your opinion, a legitimate reason to**  
2     **cancel a 10b5-1 plan?**

3             A.       Well, it certainly can be. I mean, as  
4     I've discussed in my report, I mean, executives and  
5     the board are typically concerned with the signals  
6     they send to investors. And so there's a variety of  
7     different ways that they send signals.

8             And if they perceive that the -- that  
9     investors are getting the wrong idea about what's  
10    going on, then they might try to send a signal that  
11    conveys better information. So that's a very common  
12    thing to do.

13            **Q.       I think both you and Professor**  
14    **Henderson are in agreement that there's nothing**  
15    **inherently nefarious about canceling 10b5-1 plans in**  
16    **response to media attention; would you think that's**  
17    **fair to say?**

18            A.       Yes, I think that's the -- well,  
19    Professor Henderson calls them inherently suspicious  
20    to cancel plans. So I think he -- I'm not sure he  
21    would agree with that statement that you've just  
22    made, but I certainly don't think there's anything  
23    inherently nefarious or suspicious about  
24    canceling -- canceling a 10b5-1 plan.

25            **Q.       Right.**

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1                   And my question is specifically on the  
2 basis that you want to avoid public -- negative  
3 public attention.

4                   That's a non-fraudulent reason to  
5 cancel a plan; correct?

6           A.       Yes, certainly they are going to be  
7 concerned with how the press and investors are  
8 thinking about the company.

9           Q.       In fact, canceling the -- Twitter  
10 executives canceling of their 10b5-1 plans provided  
11 them an opportunity for favorable media coverage;  
12 would you agree?

13                   MR. YOUNGWOOD: Objection to form.

14                   THE WITNESS: Well, favorable in the  
15 sense that they -- they may have believed  
16 that they were correcting a misperception on  
17 the part of the media. So favorable in the  
18 sense that it gets them back to the correct  
19 inference.

20 BY MS. CONN:

21           Q.       Okay. And would you agree that  
22 that -- that desire to correct the media's  
23 misperception, as you called it, is an economically  
24 rational act?

25           A.       It can be, but keep in mind we're not

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1 just talking about the media here. We're also  
2 talking about the media as sort of a mouthpiece of  
3 investors. So at the end of the day, they might  
4 care about media, but they care as much about  
5 investors.

6 **Q. And that's economically rational, that**  
7 **concern.**

8 A. It can be. It can be because it  
9 can -- it can -- it can, you know, influence how  
10 investors think about the company, and that can  
11 create problems.

12 **Q. I'd like to show you what's previously**  
13 **been marked as Exhibit 93.**

14 (Exhibit 93, Previously marked.)

15 MS. CONN: For the record, Exhibit 93  
16 is an April 22, 2015, e-mail between Jim  
17 Prosser and Vijaya Gadde bearing Bates  
18 TWTR\_SHEN\_00326991 to 6993.

19 BY MS. CONN:

20 **Q. Is this one of the documents you**  
21 **considered in preparing your report?**

22 A. I believe so. I know I've seen this  
23 article. And it might have been embedded in an  
24 e-mail, so --

25 **Q. Okay. I think actually it is on your**



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1 list of materials considered.

2 A. Okay.

3 Q. And you recollect reviewing it at some  
4 point; is that right?

5 A. Yep.

6 Q. Would you look at the second page of  
7 the e-mail, the one ending Bates 6992.

8 A. Okay.

9 Q. Do you see here an e-mail from Jim  
10 Prosser?

11 A. I do at the bottom, yep.

12 Q. He writes about -- some questions  
13 about -- some questions from someone who had been,  
14 quote, tipped off, unquote, that "our C-level execs  
15 all canceled their plans."

16 Do you see that?

17 A. Yes. I'm just reading it here, so...  
18 (Pause.)

19 A. Okay.

20 Q. Do you see here where Mr. Prosser  
21 says, "Told him an outside observer would indeed see  
22 that past regular stock sales that were happening  
23 are no longer happening, and that the cause of that  
24 would either be a plan cancellation or plan  
25 expiration (decline to say which it was)"?

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1 A. I do, yes.

2 Q. Can you think of any reason why  
3 Twitter wouldn't just let the public know that it  
4 was canceling -- the executives had canceled their  
5 10b5-1 plans?

6 A. Well, I mean, my understanding here is  
7 that Twitter's general policy at this time was that,  
8 in the SEC filings, when there were trades that were  
9 made, they disclosed that those were made pursuant  
10 to a 10b5-1 plan. But I don't believe that they  
11 were a company that disclosed the details of the  
12 plan ex ante, at the time the plan was entered into,  
13 the length of plan and so forth.

14 And so my understanding of what's  
15 going on here is that -- I'm not sure who Dan  
16 Primack is. I assume he might be someone in the  
17 media, but it sounds like he got some tip that all  
18 the executives were canceling the plans and  
19 essentially that, based on public information,  
20 somebody would be able to infer that, with the  
21 trades stopping, that there was either a plan  
22 cancellation or plan expiration.

23 It seems like a sort of a statement of  
24 factual issues related to what an outside observer  
25 would be able to see.

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1 So your question was?

2 Q. Yeah, let me ask a more targeted  
3 question.

4 I think you've agreed with me that in  
5 the face of the negative media scrutiny that some  
6 Twitter executives were getting for their trades,  
7 the cancellation of the plans could have been an  
8 opportunity for positive public relations, positive  
9 statement to the public. I think we actually just  
10 talked about that a moment ago.

11 A. Yeah, so selling of shares can send a  
12 negative signal to the market, buying shares can  
13 send a positive signal to the market, and the  
14 executives are cognizant of the signaling effects of  
15 the trades.

16 Q. Given that, was it -- did Twitter have  
17 an opportunity here to tell the public, our  
18 executives are canceling their plans as a way of  
19 signaling the market?

20 MR. YOUNGWOOD: Objection to form.

21 THE WITNESS: I mean, it's possible  
22 they could have done that.

23 BY MS. CONN:

24 Q. And so, in your opinion, was it  
25 economically rational for them to bypass that

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1 opportunity and decline to comment on whether the  
2 cessation in trading was the result of cancellation  
3 or simple plan expiration?

4 A. I mean, it depends on the -- you know,  
5 it depends on what they were trying to accomplish.  
6 So companies are typically concerned with setting a  
7 precedent, so they have to think about what the  
8 precedent they'd be setting was. Whether -- an  
9 inference of it being a plan cancellation or a plan  
10 expiration, whether there would be any real  
11 difference in that.

12 I mean, the fact that executives have  
13 stopped selling sends a signal, whether there's any  
14 differential benefit from making an additional  
15 public disclosure. There would be a lot of things  
16 that they would think about here.

17 Q. Let's take a look at paragraph 79 of  
18 your report, please. So in paragraph 79, midway  
19 into that paragraph, you appear to be criticizing  
20 Professor Henderson for not accepting Mr. Costolo's  
21 explanation for the plan cancellations.

22 Do you see where I'm reading from?

23 A. Let me just read this paragraph.

24 Q. Uh-huh.

25 (Pause.)

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1           A.       Okay.  Yep.

2           **Q.       Okay.  What was Mr. Costolo's**  
3 **explanation for canceling his Rule 10b5-1 plan?**

4           A.       My recollection is that there's some  
5 discussion in the deposition about him recalling  
6 something about the media scrutiny that we were just  
7 talking about.

8           **Q.       His sworn testimony was actually that**  
9 **he did not recall why he canceled his plan; isn't**  
10 **that true?**

11          A.       Well --

12                   MR. YOUNGWOOD:  Objection to form.

13                   THE WITNESS:  Yeah, I mean, I don't  
14 recall exactly, but I recall it coming up  
15 maybe more than once in the -- in the  
16 deposition and him perhaps not remembering  
17 all the specifics, but recognizing that some  
18 of the plan cancellations had been a function  
19 of media scrutiny or investor scrutiny.

20 BY MS. CONN:

21          **Q.       I'd like to show you what we're**  
22 **marking as Exhibit Guay 3.**

23                   (Guay Exhibit 3, No Bates numbers,  
24 Deposition Transcript of Richard Costolo  
25 taken on March 25, 2019, marked for

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1 identification.)

2 MS. CONN: For the record, Exhibit  
3 Guay 3 is the transcript of the deposition of  
4 Richard Costolo taken in this matter on  
5 March 25th, 2019.

6 BY MS. CONN:

7 Q. Sir, you reviewed this deposition  
8 transcript in preparing your report; is that true?

9 A. I did.

10 Q. I'd like to direct your attention to  
11 page 325 of this deposition transcript.

12 A. Okay.

13 Q. Starting at Line 7.

14 A. Okay. Which page again, 3 --

15 Q. 325.

16 A. Uh-huh. Okay.

17 Q. Starting on line 7, do you see the  
18 question, "Why did you cancel your August 1, 2014,  
19 plan on February 12th, 2015?"

20 A. Okay.

21 Q. "Answer: I don't recall why I  
22 canceled this specific plan."

23 A. Okay.

24 Q. It goes on to say, "I think as I can  
25 recall every instance, plans were created or

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1 canceled based on consultations with the general  
2 counsel, the rest of the leadership team, and  
3 sometimes, but not always, the board."

4 A. Okay.

5 Q. "Question: Can you tell me a single  
6 factor that went into your determination to cancel  
7 your August 1, 2014, trading plan on February 12,  
8 2015?

9 "Answer: I don't recall a specific  
10 factor that went into these. They were almost  
11 always...based on conversations with the general  
12 counsel and the rest of the leadership team, and  
13 those sometimes included the board, but I don't  
14 remember any specific, explicit factor that went  
15 into this."

16 Do you see that?

17 A. I do.

18 Q. You read that testimony in preparing  
19 your report?

20 A. I did.

21 Q. So isn't it true that Mr. Costolo did  
22 not have an explanation for why he canceled his  
23 plan?

24 A. Well, can we also look at the part of  
25 the deposition that I cite in my report? So in

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1 Footnote 157, where I'm actually talking about  
2 Mr. Costolo's cancellation, so that would be  
3 page 303. And so this is related to the plan that  
4 was canceled in April.

5 Q. Uh-huh.

6 A. And where he talks -- where he says,  
7 "I don't recall" -- so this is starting on line 13.

8 "So why did you cancel your plan on  
9 April -- your plans on April 11th, 2014?

10 "I don't recall the specific reason  
11 for the canceling of these plans. I do recall from  
12 time to time having conversations with our general  
13 counsel that -- that the media, specifically, the  
14 financial media, didn't distinguish between sales  
15 that were made as part of trading plans and sales  
16 that were made -- just made -- just made on a whim.  
17 So one of my concerns the -- one of the concerns  
18 that was expressed as part of these discussions is  
19 that people think -- just think you're selling on a  
20 whim in the media when you're selling as part of a  
21 plan."

22 And then, "I don't recall, however,  
23 whether that specific discussion is what drove these  
24 cancellations."

25 So clearly he remembered issues



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1 related to the media. And then, at least based on  
2 my reading of the other record, the discussions  
3 between Mr. Noto and other executives -- I think  
4 putting all of that together at the time of these  
5 plan cancellations at the start of the class  
6 period -- at least it seems to me like that's a  
7 reasonable explanation, at least in general, for the  
8 cancellation of the plans.

9 And at least Professor Henderson and  
10 the plaintiffs, I think, believe that it was a  
11 coordinated cancellation, so presumably  
12 Mr. Costolo's reasons were very similar to the other  
13 executives'.

14 Q. The passage you read from  
15 Mr. Costolo's deposition is referring to a  
16 different -- cancellation of a different plan;  
17 correct?

18 A. That's correct.

19 Q. And Mr. Costolo, you would agree, was  
20 asked several times during his deposition what  
21 motivated the cancellation of the plan in  
22 February 2015?

23 A. He was asked in his deposition, yes.

24 Q. And at no time was he able to testify  
25 with certainty as to why he canceled that plan;

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1 true?

2 A. From his deposition, yes. And --  
3 yeah. So I mean...

4 Q. So is it fair to say you assumed based  
5 on a conversation -- based on testimony about a  
6 different cancellation and some e-mails you saw,  
7 that Mr. Costolo canceled his plan in response to  
8 negative media scrutiny?

9 A. Yes, so I assume that based on, yes,  
10 Mr. Costolo's discussion of being -- canceling plans  
11 because of media scrutiny as well as the other  
12 executives canceling plans because of the media  
13 scrutiny -- that the media scrutiny was, I assume,  
14 one of the reasons for Mr. Costolo's cancellation of  
15 his plan in the beginning of the class period.

16 Q. And given that Mr. Costolo himself  
17 could not explain why he canceled his plan in  
18 February 2015 and that you haven't had any  
19 conversations with him directly, isn't it just  
20 speculation on your part that he canceled his plan  
21 as a result of media scrutiny?

22 A. Well --

23 MR. YOUNGWOOD: Objection to form.

24 THE WITNESS: -- you know, is it  
25 possible that there was another reason? It's

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1 possible. I mean, the plaintiffs don't seem  
2 to think so in their allegations about  
3 coordinated plans. Professor Henderson  
4 believes it was a coordinated plan.

5 So I don't think the coordination  
6 issue here is really in dispute to some  
7 extent, at least in the sense that they  
8 communicated about this between themselves.

9 BY MS. CONN:

10 Q. Just to be clear, Professor, is your  
11 answer to my question yes?

12 A. What was the question again?

13 Q. Isn't it speculation on your part that  
14 he canceled his plan as a result of media scrutiny?

15 MR. YOUNGWOOD: Objection to form.

16 THE WITNESS: Is there a possibility  
17 that there were other factors that went into  
18 it? There's a possibility.

19 BY MS. CONN:

20 Q. Did you see any evidence that  
21 Mr. Costolo was ever concerned about the proximity  
22 of his trades to the disclosure of negative  
23 information about the company?

24 MR. YOUNGWOOD: Objection to form.

25 THE WITNESS: Not that I can recall

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1           seeing -- certainly not in Professor  
2           Henderson's report. I don't see anything --  
3           I don't recall seeing anything.

4       BY MS. CONN:

5           **Q.       I'd like to show you what we're**  
6       **marking as Guay Exhibit 4.**

7                       (Guay Exhibit 4, Bates Nos.  
8           TWTR\_SHEN\_00082867 through  
9           TWTR\_SHEN\_00082869, E-mail Chain, marked for  
10          identification.)

11                      MS. CONN: For the record, Guay  
12          Exhibit 4 is a May 25, 2015, e-mail from Dick  
13          Costolo to Nancy Nauheimer,  
14          N-A-U-H-E-I-M-E-R, bearing Bates  
15          TWTR\_SHEN\_00082867 through 82869.

16       BY MS. CONN:

17           **Q.       Professor, I'll represent to you that**  
18       **this document is included in your list of materials**  
19       **considered.**

20                      **Do you recall reviewing this document**  
21       **in the course of preparing your report?**

22           A.       Let me take a look here.

23           **Q.       Sure.**

24                      (Pause.)

25           A.       This is going to take me a few

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1 minutes.

2 Q. Sure. Take your time.

3 (Pause.)

4 A. Can I just ask, are there multiple  
5 e-mails here or is it all part of one big, long  
6 e-mail -- two e-mails, I guess, maybe?

7 Q. I think it is two e-mails.

8 A. Okay.

9 (Pause.)

10 A. Okay.

11 Q. I'd like to just direct your attention  
12 to the top of the document, the first page of the  
13 document, Mr. Costolo's e-mail --

14 A. Okay.

15 Q. -- where he tells Nancy Nauheimer,  
16 "I'd like my first sales date to be September 1.  
17 That gets us out of the way of the next earnings  
18 call and although we don't have any material  
19 non-public information right now, there's a 50/50  
20 chance that something happens in earnings that  
21 impacts the stock in some way and then it looks  
22 like, 'oh, he set up that plan KNOWING that xyz was  
23 happening'."

24 Do you see that?

25 A. Okay.

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1 Q. Is that an indication to you that  
2 Mr. Costolo was aware of -- withdraw that.

3 Is that an indication to you that  
4 Mr. Costolo was sensitive to the timing of his  
5 trades relative to the release of negative  
6 information about the company?

7 A. No, there's nothing in here about  
8 negative information.

9 Q. What do you mean when you say "there's  
10 nothing in here about negative information"?

11 MR. YOUNGWOOD: Objection to form.

12 THE WITNESS: I don't see anything in  
13 here about negative information.

14 BY MS. CONN:

15 Q. His e-mail is addressing the  
16 possibility of -- well, his e-mail relates to  
17 information about the company -- previously  
18 undisclosed information about the company; would you  
19 agree with that?

20 A. No.

21 Q. Why not?

22 A. He says he doesn't have any material  
23 non-public information. He says, "there's a 50/50  
24 chance that something happens in earnings." That  
25 doesn't sound like he even knows what that could be,

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1 but it's some risk -- certainly there's some risk  
2 that there might be something in earnings that  
3 impacts the stock price in some way.

4 And so, you know, is this saying that  
5 he's sensitive to the timing of his trades and, you  
6 know, the perception that maybe investors might have  
7 about the timing of certain trades? Yes. But it  
8 doesn't tell me -- there's nothing in here about  
9 anything that he knows or any bad news or anything  
10 like that.

11 Q. Okay. I think maybe we just missed  
12 each other with the question. That's really what I  
13 was getting to, is that he's sensitive to the timing  
14 of his trades and the perception that investors may  
15 have.

16 A. Yes, that's true of all executives.

17 Q. Let's go to paragraph 80 of your  
18 report.

19 A. Okay.

20 Q. You write that "Professor Henderson  
21 provides no facts to support this claim, nor does he  
22 provide any academic literature that identifies an  
23 actual practice of executives timing cancellations  
24 of their 10b5-1 plans to distance themselves from  
25 the public release of negative material

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1 information."

2 Do you see that?

3 A. I do.

4 Q. But you agreed with me earlier in your  
5 deposition that an executive who is in possession of  
6 negative material non-public information may have an  
7 incentive to cancel a plan; is that right?

8 A. I don't recall that. To cancel a plan  
9 or to let it go through?

10 Q. To cancel.

11 A. I don't recall that.

12 Q. You don't recall agreeing with me on  
13 that point?

14 A. No. I mean, cancel -- Professor  
15 Henderson agrees with this as well, that if you want  
16 to earn normal returns from your 10b5-1 plan in the  
17 face of pending negative information, you allow the  
18 trades to go through. You don't cancel it. So that  
19 would be inconsistent with trying to take advantage  
20 of your material non-public information.

21 Q. Do you agree that avoiding negative  
22 publicity could be worth more than the potential  
23 gains from trades executed when the executive is  
24 aware of negative material non-public information?

25 A. I mean, it would certainly --



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1 Professor Henderson's provided no evidence of that.  
2 I've seen no evidence of that in this case. Is it  
3 possible? Anything's possible.

4 Q. Well, you say you've seen no evidence  
5 of that in this case, but isn't it true that  
6 Mr. Costolo's -- you've also opined that  
7 Mr. Costolo's cancellations of his trades, if  
8 plaintiffs' allegations are true, cost him profits.

9 A. Yes, that's true. But your question  
10 was could something else outweigh those lost  
11 profits. And I haven't seen any evidence of that,  
12 and Professor Henderson certainly hasn't provided  
13 any evidence of that.

14 Q. Do you have any evidence that  
15 Mr. Costolo knew precisely when negative information  
16 would be released to the market about Twitter's  
17 business?

18 A. I don't know whether he had such  
19 information, and I don't know if he knew when it was  
20 going to be released. I've seen no evidence of  
21 that. Professor Henderson has provided no support  
22 for that.

23 Q. Going on to paragraph 81, you write,  
24 "Just as importantly, Professor Henderson fails to  
25 articulate how his unsubstantiated conjecture about

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1     **the purpose of the 10b5-1 plan cancellations**  
2     benefited Twitter's executives (i.e., how the  
3     cancellations of Twitter executives' trading plans  
4     were motivated by potential financial gain from  
5     using alleged material non-public information)."

6             A.       I see that.

7             **Q.       Do you see that?**

8             A.       Yes, I do.

9             **Q.       Do you believe that Professor**  
10     **Henderson was required to show that defendants were**  
11     **motivated by potential financial gain?**

12            A.       I mean, all I can see is what's in his  
13     report and what he was asked to do, but certainly,  
14     in his opinions, he tries to opine on potential  
15     explanations for these cancellations for which he  
16     provides no support.

17            **Q.       And you don't know the legal**  
18     **significance of Professor Henderson's -- let me**  
19     **withdraw that.**

20                    You don't know the legal significance  
21     of the fact that Professor Henderson did not  
22     identify a financial motive on the part of the  
23     individual defendants; is that true?

24            A.       I'm not sure he provided any motive,  
25     whether it's financial or otherwise. I mean, I

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1 didn't see any support for any motive.

2 Q. And do you know the legal significance  
3 of that?

4 A. No.

5 Q. Economically rational behavior is not  
6 always the course of the -- the course of conduct  
7 that results in the greatest personal profit for the  
8 executive; would you agree with that?

9 A. Say that again.

10 Q. Yes.

11 Economically rational behavior is  
12 not -- does not always mean the course of conduct  
13 that results in the greatest personal profit for the  
14 executive; would you agree with that?

15 MR. YOUNGWOOD: Objection to form.

16 THE WITNESS: I mean, you know,  
17 certainly doesn't always have to. It's  
18 certainly possible that it doesn't. I  
19 mean --

20 BY MS. CONN:

21 Q. I mean --

22 A. It might not be economically rational  
23 to play the lottery, but if you win, you make money.

24 Q. Well, as an example from this case,  
25 you, I think, agree that it might be economically

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1 rational for executives to refrain from trading in  
2 order to send a positive signal to the market even  
3 if that means giving up financial gains.

4 A. Well, I'm not sure what the financial  
5 gains are that you're talking about. So when I talk  
6 about financial gains in my report, it's -- I'm  
7 talking about in the world -- in a world where the  
8 plaintiffs' allegations are correct, where the stock  
9 is mispriced.

10 So if we're assuming we're in a world  
11 where the stock is mispriced and you know that, then  
12 not selling stock when you have the opportunity to  
13 do it foregoes some profit you could have made and  
14 buying stock when you didn't have to incurs some  
15 loss.

16 But if we're in the other world, where  
17 the plaintiffs' allegations are not correct and the  
18 stock is fairly valued, then canceling the plan  
19 doesn't provide a direct financial benefit, although  
20 they do have to forego the diversification that they  
21 were trying to achieve or some of those other  
22 personal objectives.

23 Q. You've previously written that a  
24 manager's incentive is to maximize the market's  
25 assessment of the value of the firm; is that

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1 correct?

2 A. Well, maybe you can point me to  
3 something so --

4 Q. Sure.

5 I'll hand you what we're marking as  
6 Guay Exhibit 5.

7 (Guay Exhibit 5, No Bates numbers,  
8 Journal of Financial Reporting Article,  
9 marked for identification.)

10 MS. CONN: For the record, Guay  
11 Exhibit 5 is an article from the Journal of  
12 Financial Reporting titled Conservative  
13 Disclosure, by Wayne Guay and Robert --

14 BY MS. CONN:

15 Q. Verrecchia, am I saying that right?

16 A. You are.

17 Q. Okay. You're familiar with this  
18 document; correct?

19 A. I am, yes.

20 Q. You are one of the coauthors of this  
21 article?

22 A. I am.

23 Q. If you would turn to page 75 of the  
24 article. The page numbers are at the top.

25 A. Uh-huh.

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1 Q. About midway through the page, do you  
2 see the sentence that reads, "The manager's  
3 incentive is to maximize the market's assessment of  
4 the value of the firm"?

5 A. Right.

6 Q. "If the manager is informed, she  
7 maximizes assessments by acting strategically with  
8 regard to disclosing versus withholding her  
9 knowledge of firm value."

10 A. Okay.

11 Q. Is that a statement you stand by  
12 today?

13 A. Well, so I just -- probably a little  
14 bit of clarification for what that actually means.  
15 So in this section -- if you look at the first  
16 sentence there of that section that says -- so the  
17 top of the page, "Conventions in the Literature."

18 Q. Uh-huh.

19 A. Then you see, "As the basis of our  
20 analysis we extend Jung and Kwon (1988; hereafter,  
21 JK)."

22 So that's a prior theory paper that  
23 we're building on. So the sentence you wrote [sic]  
24 comes from a paragraph that starts with "In JK, the  
25 manager does" such and such. So here what we're

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1 describing is what that other paper does. So we're  
2 not taking this on as our view or our opinion.  
3 We're simply describing what those other authors do  
4 in their model.

5 Q. Well, what about the statement on  
6 page 76 under "Disclosure Policy Choice"?

7 A. Okay.

8 Q. You say, "The discretionary disclosure  
9 literature is based on the notion that the manager  
10 behaves strategically, which is to say in her own  
11 self-interest."

12 Is that a conclusion that you're  
13 reaching in this paper or, again, are you just  
14 summarizing some other person's written work?

15 A. I'm summarizing the literature.

16 Q. How about on page 82?

17 A. Okay.

18 Q. You say, "The intuition that underlies  
19 the benefit of conservative disclosure is  
20 straightforward. In the absence of any mandatory  
21 disclosure requirements, strategic behavior compels  
22 a manager to disclose voluntarily high realizations  
23 and withhold low realizations."

24 A. Uh-huh.

25 Q. Is that a conclusion you've made in

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1     **this paper, or are you simply summarizing someone**  
2     **else's written work?**

3             A.       No, this is something that comes out  
4     of the model that we have. So we have a model. And  
5     a model is just a stripped-down version of the  
6     world, so it doesn't describe any particular  
7     managers or any particular behaviors.

8                     So based on the assumptions that we  
9     have in that model, the results we get stem -- we  
10    make an assumption in this paper that managers  
11    behave strategically in a certain way.

12                    So this is a little bit different  
13    paper. This is a theoretical paper where we make  
14    assumptions and then, based on those assumptions, we  
15    try to figure out how the world might work. Whereas  
16    the other -- some of the other papers are empirical  
17    papers where we actually try to test to see how the  
18    world works.

19                    So this one is just -- we make some  
20    assumptions and, based on those assumptions, out pop  
21    some results, but we're not trying to describe  
22    necessarily what a manager in any particular  
23    circumstance would do.

24             **Q.       Going back to paragraph 81 of your**  
25     **report.**



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1           A.       Okay.

2           Q.       We've spoken a little bit about what  
3       you mean by "potential financial gains" in this  
4       paragraph and in this report.

5                   Do you agree that whether or not the  
6       Twitter executives' cancellations of their plans  
7       resulted in any financial gain, that does not end  
8       the inquiry as to their state of mind?

9           A.       Well, again, I'm not opining on their  
10       state of mind. So I've given some opinions on the  
11       cancellation -- the delayed stock sales or canceling  
12       the plans and what the financial cost of that would  
13       be, but I'm not trying to opine on their state of  
14       mind.

15          Q.       And you don't know the legal  
16       significance of the fact that they did or did not  
17       make financial gains on the question of their state  
18       of mind?

19          A.       I don't.

20                   MS. CONN: We've been on the record a  
21       little more than an hour. Can we take a  
22       short break?

23                   MR. YOUNGWOOD: Sure.

24                   THE VIDEOGRAPHER: The time now is  
25       2:02 p.m. We are off the record.

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1 (Recess from the record.)

2 THE VIDEOGRAPHER: This marks the  
3 beginning of Media No. 4. The time right now  
4 is 2:17 p.m. We're back on the record.

5 BY MS. CONN:

6 Q. Welcome back, Professor. You  
7 understand that you're still under oath?

8 A. Yes.

9 Q. So we were discussing your report,  
10 paragraphs 81 -- actually, I'd like to direct your  
11 attention now to paragraph 83.

12 A. Okay.

13 Q. You state, in paragraph 83, that  
14 "Professor Henderson's research does not support his  
15 opinions in this matter."

16 Do you see where I'm reading from?

17 A. "Professor Henderson's research does  
18 not support" -- yes, that's correct.

19 Q. And when you refer to "Professor  
20 Henderson's research," are you referring to the  
21 study he coauthored with Alan Jagolinzer?

22 A. Yes.

23 Q. Jagolinzer is someone that you've  
24 cited frequently in your own published work; is that  
25 true?

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1 A. I'm sure I have cited him, yes.

2 Q. In fact, I think you referenced him  
3 earlier today in the deposition.

4 A. That's probably right.

5 Q. Have you read that study?

6 A. I have.

7 Q. And you're aware, then, that it's  
8 based on Jagolinzer and Henderson reviewing  
9 thousands of 10b5-1 plans; true?

10 A. I don't recall --

11 MR. YOUNGWOOD: Objection to form.

12 THE WITNESS: I don't recall how many  
13 10b5-1 plans they can see in that -- in that,  
14 10b5-1 plans are voluntary disclosures. So  
15 they make some assumptions in that paper  
16 about what is a 10b5-1 plan, even though they  
17 can't observe them. So I'd have to see the  
18 paper to know how many of those plans they  
19 can actually see.

20 BY MS. CONN:

21 Q. How many Rule 10b5-1 plans have you  
22 reviewed in the course of your work?

23 A. Hundreds.

24 Q. Have you ever advised a company on  
25 structuring an executive's 10b5-1 plans?

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1           A.       No.

2           **Q.       Have you ever provided consultation to**  
3 **an industry group about how to structure 10b5-1**  
4 **plans?**

5           A.       Broadly speaking, yes.

6           **Q.       Can you explain what you mean by that.**

7           A.       Yes. I've given public talks to  
8 industry groups or practitioner groups and law firm  
9 round tables where they've invited in executives and  
10 board members from companies where I've been asked  
11 to give speeches about issues related to executive  
12 compensation, stock option exercises, stock sales,  
13 insider trading, 10b5-1 plans, those sorts of  
14 things.

15          **Q.       Any of those talks specifically about**  
16 **Rule 10b5-1, or has that just been part of a broader**  
17 **discussion about executive compensation?**

18          A.       The whole talk wouldn't have been  
19 about 10b5-1. I spent 15, 20 minutes on it or  
20 something.

21          **Q.       Did you -- prior to submitting your**  
22 **report in this matter, were you already familiar**  
23 **with Henderson and Jagolinzer's study?**

24          A.       In this matter? Yes, I had run into  
25 that study in previous litigation matters.

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1 Q. Did you re-review it for purposes of  
2 formulating your opinions in this matter?

3 A. Yes.

4 Q. Would you agree with me that Professor  
5 Henderson and Dr. Jagolinzer come to the conclusion  
6 that Rule 10b5-1 plans can be manipulated?

7 MR. YOUNGWOOD: Objection to form.

8 THE WITNESS: I don't know about the  
9 language. I think my recollection -- and  
10 this is I think more based on the earlier  
11 work by Alan Jagolinzer by himself, but the  
12 finding in that prior paper is that it's  
13 possible to -- may be possible to generate  
14 abnormal returns even using a 10b5-1 plan.

15 BY MS. CONN:

16 Q. Is the -- withdraw that.

17 When you say that "Professor  
18 Henderson's research does not support his opinions  
19 in this matter," is the crux of that criticism that  
20 Professor Henderson's and Dr. Jagolinzer's study  
21 analyzed trades under 10b5-1 plans and not  
22 cancellations of those plans?

23 A. No, that's not really it.

24 Q. Okay. I'm referring to paragraph 86  
25 where you say, "Neither of the above scenarios apply

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1 to Twitter executives in this matter."

2 A. Yes. Yeah, that's correct.

3 Q. And when you refer to "above  
4 scenarios," you're referring to -- you're referring  
5 to trading the plan, correct, based on paragraph 85?

6 A. No. I mean, the point I'm making  
7 about Professor Henderson's research is that the --  
8 in his paper and the Jagolinzer original paper,  
9 which is published in a peer-reviewed journal --  
10 Professor Henderson's report -- paper is not  
11 published in a peer-reviewed journal.

12 But in that earlier paper, the idea is  
13 that executives may be able to generate abnormal  
14 returns using 10b5-1 plans, and there may be a  
15 strategy whereby a combination of either allowing  
16 the plan to trade sometimes and canceling the plan  
17 can generate abnormal returns.

18 And the point that I'm making in my  
19 report is that the scenario that's conjectured by  
20 Jagolinzer, and then later by Professor Henderson  
21 and Jagolinzer, is precisely the opposite scenario.

22 So the way that they are argue in  
23 their papers that an executive can earn abnormal  
24 returns and -- is exactly the opposite scenario as  
25 what we see in the Twitter case. In fact, in the

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1 Twitter case, what the executives did would have  
2 earned negative abnormal returns. So it's exactly  
3 the opposite.

4 And I don't know -- I just don't know  
5 whether Professor Henderson didn't realize that or  
6 does realize that, but that certainly does not  
7 apply.

8 MS. CONN: Just for the court  
9 reporter's benefit --

10 MR. YOUNGWOOD: Jagolinzer?

11 MS. CONN: -- I'm giving her the  
12 spelling of Jagolinzer.

13 BY MS. CONN:

14 **Q. To your knowledge, has anyone ever**  
15 **done an empirical study of using Rule 10b5-1**  
16 **cancellations as a way of manipulating the rule?**

17 A. Well, not in -- not as directly as you  
18 state it, but underlying some of -- the  
19 interpretation that the authors of some of the  
20 papers that you've been talking about -- the  
21 interpretation they make of their findings is that  
22 the abnormal returns from these plans are generated  
23 by, again, a combination of canceling strategically  
24 and allowing certain plans to continue.

25 But the plans that are canceled are

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1 precisely the opposite types of plans as the Twitter  
2 case. And the -- the scenarios in which they would  
3 allow the trades to go through are precisely what we  
4 see in the Twitter case, but in the Twitter case,  
5 they canceled when they would have earned abnormal  
6 returns by letting the sales go through.

7 **Q. I see.**

8 A. I think Footnote 166 in my report is a  
9 very easy way to see that. It just pulls an example  
10 that Professor Henderson uses in his paper. And if  
11 you just read through it carefully, as I note at the  
12 end of that footnote, you'll see that the scenario  
13 he conjectures here is exactly the opposite of what  
14 happened in the Twitter case.

15 **Q. I'd like to direct your attention to**  
16 **page 53 of your report.**

17 A. 53. Okay.

18 **Q. I'm actually looking at the heading**  
19 **here, Heading C. You write here that, "Mr. Costolo**  
20 **and Mr. Noto engaged in trading behavior during the**  
21 **class period that is inconsistent with plaintiffs'**  
22 **allegations that they used allegedly material**  
23 **non-public information to their benefit."**

24 A. Uh-huh.

25 **Q. Is that your understanding of**



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1 plaintiffs' allegations in this matter?

2 A. Broadly, yes.

3 Q. And is that based on your reading of  
4 the complaint?

5 A. I mean, broadly, yes.

6 Q. I may have asked you this.

7 Did you read the court's order on the  
8 motion to dismiss?

9 A. I think I did.

10 Q. It is in your list of materials  
11 considered.

12 A. I think I did.

13 Q. I'm handing you what we'll mark as  
14 Exhibit Guay 6.

15 (Guay Exhibit 6, No Bates numbers,  
16 Order Granting In Part and Denying In Part  
17 Defendants' Motion to Dismiss, marked for  
18 identification.)

19 THE WITNESS: Okay.

20 BY MS. CONN:

21 Q. Does this document look familiar to  
22 you, sir?

23 (Pause.)

24 A. Yes, I think I read this at some  
25 point.

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1 Q. You may have read it in a different  
2 format --

3 A. Okay.

4 Q. -- single-spaced, double-column  
5 format.

6 A. I don't know. Okay.

7 Q. But in any event, I'll represent to  
8 you that this is the court's order denying --  
9 granting in part and denying in part defendants'  
10 motion to dismiss.

11 I'd like to direct your attention to  
12 page 40 of the order.

13 A. Okay.

14 Q. The bottom paragraph there --

15 A. Okay.

16 Q. -- says, "Defendants also emphasize  
17 the 'absence of allegations of relevant stock sales'  
18 during the class period. However, as plaintiff  
19 [sic] notes, their complaint does not rely on  
20 allegations of an improper financial motive to  
21 demonstrate scienter, nor does it reference stock  
22 sales. Rather, plaintiff's [sic] claim that  
23 defendants were motivated by an attempt to live up  
24 to the overly optimistic promises made at Analyst  
25 Day."

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1 Did you read that paragraph before you  
2 prepared your report, sir?

3 A. I would think I did.

4 Q. If, in fact, the court has accurately  
5 summarized plaintiffs' allegations and is correct  
6 that their complaint does not rely on allegations of  
7 an improper financial motive to demonstrate  
8 scienter, what is the relevance of your opinion?

9 MR. YOUNGWOOD: Objection to form. He  
10 wrote a rebuttal report to your expert.

11 BY MS. CONN:

12 Q. Go ahead.

13 MR. YOUNGWOOD: I think it calls for a  
14 legal conclusion. Objection.

15 THE WITNESS: What is the relevance of  
16 my opinion?

17 BY MS. CONN:

18 Q. Uh-huh.

19 A. So I was asked to essentially -- I  
20 think we talked about this when I discussed my  
21 assignment. So I was asked -- going back to  
22 paragraph 6, "I've been asked by counsel for  
23 defendants to respond to Professor Henderson's  
24 opinions and evaluate whether or not the trading  
25 behavior of Mr. Costolo and Mr. Noto, as well as

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1 other Twitter executives, during the class period is  
2 inconsistent with an intent to deceive investors or  
3 improperly profit off of material non-public  
4 information."

5 So my analysis in this section shows  
6 that by canceling -- assuming the plaintiffs'  
7 allegations are correct and Twitter's stock price  
8 was inflated during the class period, Mr. Costolo's  
9 cancellation of the plans was financially costly and  
10 Mr. Noto's purchase of shares was financially  
11 costly, and so that's what I was asked to do.

12 Q. All right. I'm simply asking because  
13 you've characterized in your report plaintiffs'  
14 allegations that defendants used allegedly material  
15 non-public information to their benefit. So if that  
16 is not, in fact, plaintiffs' allegation, what is --  
17 what exactly are you opining on here?

18 MR. YOUNGWOOD: Objection to form.

19 THE WITNESS: I mean, I think my  
20 opinion is clear. I mean, I've given the  
21 opinion -- I've analyzed what I was asked to  
22 analyze, and I drew an opinion. And if that  
23 opinion turns out not to be relevant to  
24 certain issues in the case, so be it.

25 But my understanding is that

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1           plaintiffs are alleging that somehow  
2           Mr. Costolo and Mr. Noto received some  
3           benefit from this material non-public  
4           information.

5       BY MS. CONN:

6           **Q.       Did you write --**

7           A.       If that's not part of the allegation,  
8           then so be it, but I was still asked to do this  
9           analysis, and I've done it.

10          **Q.       Did you write your report?**

11          A.       Did I write my report?

12          **Q.       Uh-huh.**

13          A.       I certainly wrote -- I wrote -- I  
14          wrote much of it, but it was certainly an iterative  
15          process. I received assistance from Analysis Group  
16          at my direction.

17          **Q.       Did you receive assistance from**  
18          **counsel?**

19                   MR. YOUNGWOOD: Objection to form.

20                   THE WITNESS: I mean, drafts were  
21                   provided to counsel, and they would have  
22                   provided feedback at various points in time.

23       BY MS. CONN:

24          **Q.       When you say you wrote "much" of your**  
25          **report, can you quantify that at all?**

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1           A.       Well, certainly, all the words in this  
2       final document are mine. I mean, some of the parts  
3       of the -- some of the parts would have been more  
4       efficient for me to draft. Some of the parts would  
5       have been more efficient for Analysis Group to take  
6       the first crack at drafting.

7                       And then iteratively, over time, I  
8       would edit, make comments, they would make comments,  
9       and sort of evolve from there. But everything in  
10      here is my opinion.

11           **Q.       Just going back briefly to the**  
12      **discussion about Analysis Group.**

13                       So it sounds like their -- I'm trying  
14      to understand their role in preparing your report.

15           A.       Uh-huh.

16           **Q.       Is it true that they conducted some**  
17      **research for -- to support your report?**

18           A.       Yes, at my direction. I mean, we  
19      would -- I would -- we would discuss, for example,  
20      you know, how to construct a peer group for  
21      Mr. Costolo. And then I would direct them to go  
22      identify, you know -- go pull the documents and to  
23      structure the peer group in a way that I have asked  
24      them to and to then tabulate the trading behavior  
25      that they observe. And then I would take a look at

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1 it and consider what opinions I can draw from that.

2 Q. When you say "tabulate the trading  
3 behavior," so were they also running some  
4 calculations?

5 A. Yes. So they would collect data, run  
6 the calculations. They would provide me with access  
7 to the spreadsheets, the underlying documents so  
8 that I could sort of look through them and sort of  
9 check to make sure I understood exactly what they  
10 were doing.

11 Q. Did they also search for and collect  
12 documents for you?

13 A. They did.

14 Q. Do you know if Analysis Group had  
15 access to a database of documents or some kind of  
16 document repository?

17 A. I don't know the answer to that.

18 Q. Then based on your testimony a moment  
19 ago, it sounds like Analysis Group also had some  
20 role in drafting at least portions of your report?

21 A. Yes, certainly the exhibits -- some of  
22 the exhibits, some of the sections that are more  
23 sort of numerical, to take a crack at just putting  
24 in the descriptive evidence and that sort of thing.

25 Q. If we could turn to those exhibits now

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1     that you referenced them.

2                     **Exhibit 1 to your report.**

3             A.       Okay.

4             **Q.       Did you prepare this or did Analysis**  
5     **Group prepare it -- withdraw that.**

6                     **Who prepared this exhibit?**

7                     MR. YOUNGWOOD:   Objection to form.

8                     THE WITNESS:   This is just a stock  
9                     price chart.   So this is something they would  
10                    have -- they would have put together.   I  
11                    mean, at the start of all these cases, I pull  
12                    down the raw data myself to look at the stock  
13                    price path, but they would have constructed  
14                    this exhibit.

15     BY MS. CONN:

16             **Q.       If you turn to the next exhibit, which**  
17     **is 2a.**

18             A.       Uh-huh.

19             **Q.       Who prepared this exhibit?**

20             A.       So certainly they would have -- they  
21                    would have drafted this exhibit, and then I would  
22                    have provided feedback and sort of looked at some of  
23                    the underlying documents.

24             **Q.       And is your answer the same with the**  
25     **rest of the subexhibits under Tab 2, so Exhibit 2b,**



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1 **Exhibit 2c?**

2 A. Yes, so all of the exhibits they would  
3 have taken the first crack at. It's very data  
4 labor-intensive. So they would have taken --  
5 taken -- put together the first draft. And then I  
6 would have provided feedback on format and what goes  
7 in the exhibit, how to structure it to make it  
8 clearer, that sort of thing.

9 Q. In that prior answer, you just said  
10 "all of the exhibits." So are we now talking about  
11 also Exhibits 3, 4, 5 and 6?

12 A. Yes.

13 Q. Was there anything else that Analysis  
14 Group did in preparing your report and the attached  
15 exhibits?

16 A. Anything else? You know, they  
17 certainly helped compile -- certainly helped with  
18 compiling the list of materials considered, you  
19 know, keeping track of all of that, and ensuring  
20 that everything's sort of referenced and footnoted  
21 correctly. So, you know, just a lot of -- sort of,  
22 you know -- yeah, just making sure the report was  
23 in -- was in good shape in terms of dotting the Is  
24 and crossing the Ts.

25 Q. If I'm understanding you correctly,

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1     you personally were not running any searches for  
2     documents; is that right?

3             A.       Personally not running searches for  
4     documents? None of the -- none of the documents  
5     specific to this case.

6             Q.       The Bates stamped documents.

7             A.       None of the Bates stamped documents,  
8     no.

9             Q.       You don't know whether or not anyone  
10    at Analysis Group was running searches for --  
11    through the Bates stamped documents.

12            A.       I just don't know, no.

13            Q.       So it's fair to say you don't know  
14    exactly what parameters might have been used to  
15    locate the documents in your -- the Bates stamped  
16    documents in your materials considered list.

17            A.       What I don't know is whether they had  
18    just a massive database of documents that they could  
19    sift through themselves when I asked for things or  
20    whether they had to go to counsel and say, can we  
21    get the documents that address this or that issue.

22            Q.       And did you have the -- you reviewed  
23    some of the deposition transcripts; is that right?

24            A.       I did, yes.

25            Q.       Did you have those in hard copy? Or

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1     **how were those organized for you?**

2             A.       They would -- just about everything  
3     was provided to me electronically.

4             **Q.       And the transcripts you reviewed, did**  
5     **they have the exhibits attached?**

6             A.       That I can't recall. I think we did,  
7     yeah -- well, attached -- I think, yeah. So when I  
8     received the transcripts, they came electronically.  
9     And I think there were subfolders that contained  
10    exhibits. Yep, I think so.

11            **Q.       I want to go back to this idea of**  
12    **economically rational behavior.**

13            A.       Did you say "economically rational" or  
14    "irrational"?

15            **Q.       "Rational."**

16                    **It's a phrase that you've used several**  
17    **times in your report and in your testimony here**  
18    **today.**

19            A.       Uh-huh.

20            **Q.       Is it economically rational for**  
21    **executives to delay bad news from reaching the**  
22    **market?**

23            A.       Is it --

24                    MR. YOUNGWOOD: Objection to form.

25                    THE WITNESS: Is it economically

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1           rational? I mean, there's no blanket  
2           statement there of it is or it isn't. I  
3           mean, all of these things would be  
4           case-specific.

5 BY MS. CONN:

6           **Q. It would depend on the context; is**  
7           **that your --**

8           A. It certainly can depend on the  
9           context. You need to think about what the issues  
10          are, what the costs and benefits are.

11          **Q. Can we go back to -- I forget which**  
12          **exhibit it is. It's your Corrective Disclosure**  
13          **article.**

14          A. Oh, Conservative Disclosure?

15          **Q. I'm sorry. Conservative Disclosure.**

16          A. Okay.

17          **Q. Page 85 of that article, which -- what**  
18          **exhibit number is that?**

19          A. Okay.

20                 MS. CONN: Which, for the record, just  
21                 so it's clear when we have the transcript, is  
22                 Exhibit 5, Guay Exhibit 5.

23 BY MS. CONN:

24          **Q. I'd like to point your attention on**  
25          **page 85 to your statement here in the third full**

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1 paragraph down.

2 A. Okay.

3 Q. "If left to make their own reporting  
4 decisions, managers will withhold bad news ex-post  
5 due to the manager-shareholder conflict, and firm  
6 value will be lower because shareholders are unable  
7 to efficiently remove poorly performing managers in  
8 a timely manner."

9 Do you see that?

10 A. Right.

11 Q. Is that a statement that you and your  
12 coauthors made, or are you summarizing someone  
13 else's written work?

14 A. This is just -- this is coming out of  
15 the model. So we're not giving any opinions here on  
16 what managers necessarily do and don't, but we have  
17 a model here where we make some assumptions about  
18 managers' incentives to withhold bad news in certain  
19 contexts. And then we say, if these assumptions are  
20 correct, then one might expect the accounting rules  
21 to be structured in a certain way. And then people  
22 can go off and test the implications of what we have  
23 here.

24 Q. As long as we're looking here at Guay  
25 Exhibit 5, your Conservative Disclosure article, we

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1 spoke about this earlier and you clarified that some  
2 of the statements that I've read here are a summary  
3 of other work; is that true?

4 A. Some are, yep.

5 Q. To the extent you included them here  
6 in your written article, is it fair to say that you  
7 agreed with those propositions?

8 A. No. I mean, that's -- that's not  
9 really how this works. So we -- you know, you can  
10 cite things in the literature that you don't agree  
11 with. Not that we necessarily don't agree with  
12 them, but simply having it in a paper like this  
13 doesn't mean that we're giving some opinion or  
14 drawing some inference.

15 MS. CONN: I know we just took a  
16 break, but I think I'm --

17 MR. YOUNGWOOD: Sure.

18 MS. CONN: I just want to go through  
19 my outline and not make your witness sit here  
20 while I do that.

21 MR. YOUNGWOOD: Take a break.

22 THE VIDEOGRAPHER: The time now is  
23 2:46 p.m. We're off the record.

24 (Recess from the record.)

25 THE VIDEOGRAPHER: The time right now

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1 is 3 p.m. We're back on the record.

2 BY MS. CONN:

3 Q. Welcome back, Professor Guay. You  
4 understand you're still under oath?

5 A. I do.

6 Q. I have just a few more questions for  
7 you.

8 First, we went through quite a list  
9 earlier this morning about topics that you are and  
10 are not opining on. I won't revisit those, but I do  
11 want to add to that list.

12 Are you offering any opinion on the  
13 relevance of any evidence?

14 MR. YOUNGWOOD: Objection to form.

15 THE WITNESS: The relevance to the  
16 court?

17 BY MS. CONN:

18 Q. Yes.

19 A. No.

20 Q. Are you offering an opinion on the  
21 credibility of any witness?

22 A. No.

23 Q. If I could have you turn back to your  
24 curriculum vitae, which is Appendix A to your  
25 report.

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1           A.       Uh-huh.

2           Q.       You are currently teaching at Wharton  
3   School of Business; is that correct?

4           A.       That is correct.

5           Q.       And what subjects do you teach at  
6   Wharton?

7           A.       I teach a variety. I teach a course  
8   on corporate valuation. I teach a course -- I teach  
9   an introductory accounting course to the MBA  
10   students. And I teach -- I teach a Ph.D. course on  
11   corporate governance and executive compensation to  
12   the Ph.D. students.

13          Q.       Do you teach any courses on securities  
14   regulation?

15          A.       No.

16          Q.       Have you ever?

17          A.       No.

18          Q.       Have you ever spoken to anyone at the  
19   SEC on the topic of Rule 10b5-1 plans?

20          A.       It's possible, but I can't recall  
21   specific discussions.

22          Q.       And more specifically, have you ever  
23   spoken to anyone at the SEC on the topic of the  
24   termination of a Rule 10b5-1 plan?

25          A.       Not that I recall.



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1 MS. CONN: I think that's all we have  
2 subject to redirect, if you have questions.

3 MR. YOUNGWOOD: Why don't we just take  
4 a minute or two.

5 MS. CONN: Sure.

6 THE VIDEOGRAPHER: The time now is  
7 3:02 p.m. and we are off the record.

8 (Recess from the record.)

9 THE VIDEOGRAPHER: The time right now  
10 is 3:03 p.m. We're back on the record.

11 MR. YOUNGWOOD: I have no questions.

12 MS. CONN: Professor Guay, I want to  
13 thank you again for your time today.

14 THE WITNESS: Thank you.

15 MS. CONN: Nothing further from us.

16 MR. YOUNGWOOD: You marked a few  
17 exhibits that weren't themselves marked  
18 confidential, so we probably should designate  
19 the transcript confidential.

20 MS. CONN: That's fine. Just to be  
21 clear, we reserve our rights if the  
22 transcript is used later, but that's fine for  
23 now.

24 MR. YOUNGWOOD: Yeah.

25 THE VIDEOGRAPHER: The time right now

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1 is 3:04 p.m. We're off the record.

2 (Examination concluded.)

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1 STATE OF NEW YORK )

2 ) ss:

3 COUNTY OF WESTCHESTER )

4

5 I, EILEEN MULVENNA, CSR/RMR/CRR, a  
6 Certified Court Reporter, Registered Merit Reporter,  
7 Certified Realtime Reporter, and Notary Public in  
and for the State of New York, do hereby certify:

7

8 That I reported the taking of the  
9 deposition of the witness, WAYNE R. GUAY,  
commencing on the 28th day of August, 2019, at the  
hour of 8:38 a.m.;

10

11 That prior to being examined, the witness  
12 was duly sworn by me to testify to the truth, the  
whole truth, and nothing but the truth;

13 That I thereafter transcribed my said  
14 shorthand notes into typewriting and that the  
15 typewritten transcript of said deposition is a  
complete, true and accurate transcription of my  
16 said shorthand notes taken down at said time, and  
that a request has been made to review the  
transcript.

17 I further certify that I am not a relative  
18 or employee of an attorney or counsel of any of the  
parties, nor a relative or employee of any attorney  
19 or counsel involved in said action, nor a person  
financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto  
21 set my signature this 9th day of August, 2019.

21

22



23

EILEEN MULVENNA, CSR/RMR/CRR

24

25

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In re Twitter Inc. Securities Litigation

DECLARATION UNDER PENALTY OF PERJURY

Case Name: In re Twitter Inc. Securities Litigation

Date of Deposition: 08/28/2019

Job No.: 10059450

I, WAYNE GUAY, hereby certify  
under penalty of perjury under the laws of the State of  
\_\_\_\_\_ that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of  
\_\_\_\_\_, 2019, at \_\_\_\_\_.

\_\_\_\_\_  
WAYNE GUAY

NOTARIZATION (If Required)

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me on  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, proved to me on the  
basis of satisfactory evidence to be the person  
who appeared before me.

Signature: \_\_\_\_\_ (Seal)

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Wayne Guay

In re Twitter Inc. Securities Litigation

1 DEPOSITION ERRATA SHEET

2 Case Name: In re Twitter Inc. Securities Litigation

3 Name of Witness: Wayne Guay

4 Date of Deposition: 08/28/2019

5 Job No.: 10059450

6 Reason Codes: 1. To clarify the record.

7 2. To conform to the facts.

8 3. To correct transcription errors.

9 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

10 From \_\_\_\_\_ to \_\_\_\_\_

11 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

12 From \_\_\_\_\_ to \_\_\_\_\_

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14 From \_\_\_\_\_ to \_\_\_\_\_

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19 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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22 From \_\_\_\_\_ to \_\_\_\_\_

23 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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25 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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1 DEPOSITION ERRATA SHEET

2 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

3 From \_\_\_\_\_ to \_\_\_\_\_

4 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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17 From \_\_\_\_\_ to \_\_\_\_\_

18 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

19 From \_\_\_\_\_ to \_\_\_\_\_

20 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

21 From \_\_\_\_\_ to \_\_\_\_\_

22 \_\_\_\_\_ Subject to the above changes, I certify that the  
transcript is true and correct

23 \_\_\_\_\_ No changes have been made. I certify that the  
transcript is true and correct.

24

25 \_\_\_\_\_  
WAYNE GUAY

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